LA SEPT PART DES Reports Sr. Edw. Coke Chiualer, chiefe Iuſtice del Common Banke:

*des diuers Reſolutions & Iudgements done ſur ſolemne ar-*guments & auec grand deliberation & conference des treſreuerend Iudges & Sages de la Ley, de caſes en ley queux ne fueront vnques reſolue ou adiudges par deuant: Et les raiſons & cauſes des dits Reſolutions & Iudgements.

Publies en le ſize Añ del treshaut & treſ-illuſtre IAQVES Roy Dengl. Fr. & Irel. & de Eſcoce le 42. Le fountaine de tout Pietie & Iuſtice, & la vie de la Ley.

Frequentibus argumentis & collationibus latens veritas aperitur, cum ſub eiſdẽ verbis ſæpe lateat multiplex intellectus.

Veritas ſæpius agitata magis ſplendeſcit in lucem.

¶ Printed for the Societie of Stationers.
Anno 1608.

Cum Priuilegio.

DEO,
PATRIAE,
TIBI.

SExtæ Commentariorum siue Relationum mearum parti vix extremã manum addideram (Lector candide) cum, quæ singulos exercuit Angliæ Iudices, oborta est controuersia, cuius certè similis nunquam fuit ante hunc diem in aula West. agitata: vnde etiã, dum eorum quæ audieram recens admodum memoria fuit, ea præcipuè (prout mos est semperq; apud me fuit) quæ summariè ex omnibus disputationibus atque argumentis, plurimum ponderis ac momenti, siue authorites siue rationes ad soluendam quæstionem annotaßem, in proprium solamen meum & iuuamen (infida enim est labilisque memoria) priuatim literis mandaui. Nunquam autem istã quouismodo in publicũ proditura putaui, quia (quod primum arbitror et præcipuũ quod ex Relationibus edendis percipi potest emolumentum) non veresimile est hunc casum de alijs in iudicando cognitionem informaturum: nam duo nobilißima simul & antiquißima regna, in vnam conflari monarchiam, vno in vtrisque florentißimo rege inuictißimoque monarcha dominante, hoc vsu infrequens, imo sicut ipse Phœnix vnicum & indiuiduum est in specie, cum quo comparari potest socium habens neminem. Tum demum cum tantum, quantum mei solius causa apud memet annotare volui, perfeciſſem, mandatum mihi fuit, vt de nouo (quod non minimi sudoris erat & difficultatis) in vsum etiam publicum, recolligerem: Nam certè succinctã istã & compendiosã annotandi methodus, quæ satis est in memoriam colligentis, qui omnia atque singula prout gesta fuerunt audierit & cognouerit, nequaquam sane satis erit in eo scribendi genere, quod & in præsens & futurum seculum est duraturum, & quod Lectores etiam, qui per semetipsos nihil habẽt præter illud quod ex eo quod conscriptum est addiscant, est edocturum. Et sicut vnda gignit vndam, sic labor vnus alium tanquam gemellum aliquem videtur esse consecutum: Nam cum hic quem dixi casus, nouus esset & inauditus, animum idcirco induxi non inutile fore, si, cum ei temet (candide Lector) in quantum possem erudirem, alijs item in ambiguarum quarundam, de terris & tenemẽ-

tis ſuis (in quibus adhuc graues admodum et inter ſe pugnãtes Iuriſ-peritorũ opiniones extiterunt) quæſtionũ ſolutione ſatisfacerẽ, alios nõnullos caſus vſu frequentiores, & dignitate inter cæteros nequaquam minores, nunquam antehac dilucidè ſatis iudicijs explicatos, in medium proferrem: ita vt iam ratum ſit quod iamdudum apud antiquos in prouerbium abijt, Labor laborem addit.

Putaui ego, ex mea in Concines meos charitate, cuiuſcunq; demũ conditionis religioniſue ſint, nauandam eſſe operã, vt non ſolum hanc ſeptimam Relationum mearum partem (cui colligendæ ac in lucem edendæ Deus in hiſce temporum auguſtijs, dum in grauioribus Reipublicæ negotijs verſatus ſum, vires dedit) omnibus ob oculos ponerẽ, ſed vt eoſdẽ etiam adhortarer et præmonerem in quodam non mediocris momenti caſu, qui ſingulos ita neceſſariò, eoq; modo ſpectat, vt, ſi quid in eo peccatum fuerit, in primo gradu ſit pœna de Præmunire, *in ſecundo læſæ Maieſtatis culpa, in quo tamen multi (dum Legẽ, vt mihi videtur, ignorant) temerè & inconſulto penè quotidiè delinquunt. Mihi certè confitendũ eſt, eo vſq; nunc tẽporis redactũ eſſe hoc ſeculũ, vt quiſq; pro ſe ſedulo in diſcribendis libellulis faciat,* viz. Quotidie plures, quotidie peius ſcribunt. *Et certo certius eſt ſi quiſquã hominum libros iſtos (quos ego vidi) nuperrimè conſcriptos a Roma vel a Romaniſtis ad nos vſq; attulerit, aut eos legendo ſuffragijs patrocinatus fuerit, aut eos item alijs approbando (quod maxime apud authores in votis eſt) legẽdos dederit, in ſũmas, et turbulentiſſimas periculorũ tempeſtates incidat neceſſum eſt: nam primò cum in hunc modum peccârit pœnas dabit per* Præmunire (*quæ ſic ſe habent, adiudicari non eſſe in Regis protectione; eorum terras & bona omnia in Regis poteſtatem redigi; & corpora carceri perpetuo damnari:*) *& qui ſecundò deliquerit læſæ Maieſtatis graue ſuppliciũ incurret. Hi ſunt illi libri qui ſplendidos & imprimis religioſos præ ſe ferunt titulos, hi illi ſunt qui conſcientijs hominum infirmitate laborantibus opem ferre ſe profitentur, hi ſunt illi denique qui miſeras & miſerandas peccatrices animas in optatum tranquillitatis & ſalutis portum adducere in ſe ſuſcipiunt; ac mors in olla; quemadmodum plærumq; in Pharmacopolarum vaſculis videre eſt,* quorũ tituli pollicentur remedia, ſed pixides ipſę venena continent. *Hiſce ego præmonitionibus vſus ſum e ſolicita eorum cura, qui præſtigias & impoſturas iſtas (quibus hi, quos tanto proſequuntur amore & reuerentia, in ſummum capitis periculum eos de improuiſo ducant) nondum cognôrunt. Iam vero, neque culices, qui quaſi titillando pungunt paulò, non penetrant, neque fucos iſtos qui ſuſurris tantis bombuliſque, quos edunt, maximis, aculeis autem, quibus carent ægriùs, nuſquam loci belligerare ſolent, tantillum pertimeſco; imo inquam, vt eſt apud Poetam,*

Non metuo pulicis ſtimulos, fuciq; ſuſurros.

Nec

Lectori.

Nec pili quidem æstimo inuidum istum & maledicum, qui, quo fusiùs venena sua euomeret, libellum quendam, nescio an rudem an inconcinnum magis, sub titulo & nomine Pricket, *in lucem protulit, dicatum, Optimo meo Domino & Socero Comiti Excestr. & inscriptum,* Memoriale siue mandatum Iuratorum in Assisis apud ciuitatem Nordouicam, 4. die Augusti, 1606. *quem sanè contestor non solum me omnino insciente fuisse diuulgatum, sed (omissis etiam ipsis potissimis) ne vnam quidem sententiolam eo sensu & significatione, prout dicta erat, fuisse enarratam. Iam vero si catastrophen expectes, ecce (dum perpetuum in me dedecus & infamiam inurere conatus est) quam falsum eius eum habuit expectatio? Primo enim Lectores illi, iuris-peritos dico, qui inter legendum, non solum graues & turpes errores & denias opinionum absurditates, sed ipsas etiam voces artis turpiter in alienum sensum vsurpatas, & totum denique contextum longissime a Iuris-consultorum (de legibus enim agebatur) vsu & consuetudine remotissimum esse, animaduerterunt, continuò hoc in ore habuerunt,* Inimicus & iniquus homo superseminauit zizania in medio tritici. *Deinde alij quoque cordati & æqui Lectores, dum generis dicendi & phrasis leuitatem seriò perpenderunt, suapte sponte in eandem inciderunt opinionem: nam, cum eodem ferè tempore Cõmentarium quendam ipse diuulgarem, pro certo statuerunt, si ea animus fuissem dimulgandi, memetipsum voluisse, meo proprio nomine, nequaquam nomine* Pticket, *mea propria opera omnibus inspicienda præbuisse: Idcirco quasi vna voce conclamauerunt omnes, Illud ipsum opus tum natura sua maximè nequam esse & pudendum, cum ab opifice scelerato & mendaci proficiscatur:*

Circumuertit enim vis & iniuria quemque,
Atque vnde exorta est, in eum plærunque reuertit.

In hisce sicut in alijs meis Relationibus, hoc mihi præcipuè curæ fuit, vt (quantum me penès erat) Obscuritatem, Ambiguitatem, Periclitationẽ, Nouitatem & Prolixitatem auersarer. 1. *Obscuritatem, quæ sanè haud absimilis tenebrarum est, in quibus miserè solis radijs viduos necesse est hùc illùc, vltrò citroquè, vsquè quaquè deuiare.* 2. *Ambiguitatem, in qua non vt supra lucis inopia laboramus, sed varijs meatuum anfractibus, & irremeabilibus dubitationum mæandris ita distracti sumus, vt quid sequendum, quid fugiendũ sit, prorsus ignoremus.* 3. *Periclitationem, ne quicquam omninò in medium proferrem, quod quæstiones magis nouas & controuersias adturbandũ, quàm tranquillitatem & concordiam ad stabiliendum hunc fluctuantem hominum statum procreet (non enim conuenit, vt huiusmodi Commentarij illud agant quod plerunque solent hyberni soles, qui densiores nebulas & fuliginosiores concitant, quàm quas eijsdem radiorum viribus dispergere valeant) aut quod*

Lecto-

Lectori.

Lectorem meum vel in primaria erroris & dubitationis limina quoquo modo ducat. 4. *Nouitatem, eò quòd id maximè laborandum arbitror, vt nouas quascunque interpretatiunculas & priuatas opiniones (quæ, si ad amussim nostrorum librorum & antiquorum exempla applicentur, nequaquam quadrant) periculosissimas, & studijs nostris indignissimas euitem: nam* periculosum existimo quod bonorum virorum non comprobatur exemplo. 5. *Prolixitatem, cum in Relationibus hoc imprimis sit optandum, vt sint adeo compendiariò breues, prout necessitas reſque ipsa ferre potest: sicut enim* languor prolixus grauat medicum, ita Relatio prolixa grauat lectorem.

Quòd casus ille de Postnatis reliquis est prolixior, confitendum est, at vero tres, quæ fusiorem me fecerunt in eo renuntiando, causæ grauiores accesserunt. 1. *Quòd in Camera Scaccarij casus erat discussas, ad quē quidem discutiendū omnes Angliæ Iudices (quemadmodū leges et cōsuetudines postulāt) sigillatim, apertè, & copioſè sunt argumentati.* 2. *Quia non alius fuit vspiam casus in Camera Scaccarij quod quispiam nunc temporis virorum cogitatione potest assequi, quem tot insimul Iudices tamque elaboratè, pertractārunt: non enim Dominus Cancellarius solum, sed alij etiam quatuordecim Iudices in eodem casu vires suas & ingenia limatè exercuerunt.* 3. *Quia tanta fuit varietas atque copia tàm materiæ rationum & argumentorū ponderibus libratæ, quàm formæ multis excellentium ingeniorum, mirabiliumq; artium ornamentis decoratæ, vt breuitèr & succinctè magis referri non posse videbatur.*

Nunc demum, hoc vlterius tantum votis amplector meis; Primum vt studioſus Lector quantam ego quidem (si non meum me deluserit iudicium) in componendis & formandis, tantam ille itidem reuera in legendis hisce Relationibus vtilitatem simul & voluptatem excerpat; Deinde vt quoad eius fieri possit, quamplurima legibus ipsis definiantur, quam pauciſſima vero Iudicis arbitrio relinquantur.

DEO,
PATRIAE,
TIBI.

I Had no ſooner (good Reader) made an end of the ſixt part of my Commentaries or Reports, but the greateſt caſe that euer was argued in the Hall of Weſtminſter began to come in queſtion, and afterwards was argued by all the Iudges of England. This great caſe (for that memorie is *infida & labilis*) whiles the matter was recent & freſh in mind, and almoſt yet ſounding in the eare, I ſet downe in writing, out of my ſhort obſeruations which I had taken of the effect of euery argument, (as my manner is, and euer hath beene) a ſummarie memoriall of the principall authorities and reaſons of the reſolutions of that caſe, for mine owne priuat ſollace and inſtruction. I neuer thought to haue publiſhed the ſame, for that it was not like to giue any direction in like caſes that might happen, (the chiefeſt end of publiſhing Reports) it is of his owne nature ſo like the Phœnix, and ſo ſingular and rare in accident, as the vnion of two famous and auncient kingdomes in ligeance and obedience vnder one great and mightie Monarch. Now when I had ended it for my priuat, I was by commandement to beginne againe (a matter of no ſmall labour and difficultie) for the publike. For certainly, that ſuccinct method and collection that will ſerue for the priuat memorial or repertory, eſpecially of him that knew and heard al, will nothing become a publique Report for the preſent & al poſteritie, or be ſufficiēt to inſtruct thoſe readers, who of thēſelues know nothing, but muſt be inſtructed by the report onely in the right rule & reaſon of the caſe in queſtion. And as *vndagignit vndam*, ſo commonly one labour commeth not alone: this brought on anorher with it; for ſeeing this caſe was of ſo rare a qualitie, I thought good as well for thine inſtruction and vſe (good Reader) as for the repoſe and quiet of many, in reſoluing of queſtions and doubts (wherein there hath beene great diuerſitie of opinions) concerning their eſtates and poſſeſſions, to publiſh ſome

ſome others that are common in accident, weightie in conſequent, and yet neuer reſolued or adiudged before: So as it is now verified in this, that which hath been ſaid of old, *Labor laboris laborem addit.*

With this ſeauenth worke or part of my Reports (whereunto Almightie God of his goodneſſe, hath in this ſhort time, amongſt many other publike imployments, enabled me) I haue out of my loue vnto all my deere countrie men, of what perſuaſion in religion ſoeuer they bee, thought good to giue them all a caueat or forewarning in a caſe of great importance, that deepely and dangerouſly concerns them all in ſo high a point, that in the firſt degree it is a *Premunire*, and in the ſecond high treaſon. And yet many men, without all feare (by reaſon I thinke they know not the law) runne into the danger thereof almoſt euery day. I muſt confeſſe, that this is a writing or a ſcribling world, *quotidie plures, quotidie peius ſcribunt.* And ſure I am that no man can either bring ouer thoſe bookes of late written (which I haue ſeene) from Rome or Romaniſts, or read them, and iuſtifie them, or deliuer them ouer to any other with a liking and allowance of the ſame (as the authors end and deſire is they ſhould) but they runne into deſperate dangers and downefals; for the firſt offence is a Præmunire, which is to be adiudged to be out of the Kings protection, to looſe all their lands and goods, and to ſuffer perpetuall impriſonment; and they that offend the ſecond time therein, incurre the heauie danger of high Treaſon. Theſe bookes haue glorious and goodly titles, which promiſe directions for the conſcience, and remedies for the ſoul, but there is *mors in olla*: They are like to Apothecaries boxes, *quorum tituli pollicentur remedia, ſed pixides ipſæ venena continent*, whoſe titles promiſe remedies, but the boxes themſelues containe poyſon. This fore-warning I giue out of conſcience and care of their ſafetie, that blindfold might fall into ſo great danger by their meanes whom they ſo much reuerence. I am not afraid of gnats that can pricke and cannot hurt, nor of drones that keep a buzzing, and would but cannot ſting.

Premunire. quid

Non metuo pulicis ſtimulos fuciq; ſuſurros.

And little doe I eſteeme an vncharitable and malitious practiſe in in publiſhing of an erronious and ill ſpelled Pamphet, vnder the name *Pricket*, and dedicating it to my ſingular good Lord and father in law, the Earle of Exceſter, as a Charge giuen at the Aſſiſes holden at the citie of Norwich, 4. *Auguſti*, 1606. which I proteſt was not onely publiſhed without my priuitie, but (beſides the omiſſion of diuers princi-

principall matters) that there is no one period therein expreſſed in that ſort & ſenſe that I deliuered it: wherein it is worthy of obſeruation how their expectation (of ſcandalizing me) was wholly deceiued, for behold the cataſtrophe. Such of the readers as were learned in the laws, finding not onely groſſe errours and abſurdities in law, but palpable miſtakings in the verie words of art, and the whole context of that rude and ragged ſtile, wholly diſſonant (the ſubiect being legall) from a lawyers dialect, concluded, that *inimicus & iniquus homo ſuper ſeminauit zizania in medio tritici:* the other diſcreet and indifferent readers, out of ſence and reaſon, found out the ſame concluſion, both in reſpect of the vanitie of the phraſe, and for that, I publiſhing about the ſame time one of my Commentaries, would, if I had intended the publication of any ſuch matter, haue done it my ſelfe, and not to haue ſuffered any of my works to paſſe vnder the name of *Prickes*, and ſo *vna voce conclamauerunt omnes*, that it was a ſhamefull and ſhameleſſe practiſe, and the author thereof, to be a wicked and malitious falſarie.

Circumuertit enim vis & iniuria quemq;
Atq; vnde exorta eſt, ad eum plerumq; reuertit.

In theſe and the reſt of my Reports, I haue (as much as I could) auoided obſcuritie, ambiguitie, ieoperdie, noueltie, and prolixitie: 1. Obſcuritie, for that is like vnto darkeneſſe, wherein a man, for want of light, can hardly with all his induſtrie diſcerne any way. 2. Ambiguitie, where there is light ynough, but there bee ſo many winding and intricat wayes, as a man, for want of direction, ſhall bee much perplexed and intangled, to find out the right way. 3. Ieoperdie, either in publiſhing of any thing, that might rather ſtirre vp ſuits and controuerſies in this troubleſome world, than ſtabliſh quietneſſe and repoſe betweene man and man (for a Commentarie ſhould not be like vnto the Winterly ſunne, that raiſeth vp greater and thicker miſts and fogges, than it is able to diſperſe) or in bringing the reader, by any meanes, into the leaſt queſtion of perill or daunger at all. 4. Noueltie, for I haue euer holden all new or priuate interpretations, or opinions, which haue no ground or warrant out of the reaſon or rule of our bookes, or former preſidents, to bee daungerous, and not worthy of any obſeruation: for *periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo.* 5. Prolixitie, for a report ought to bee no longer than the matter requireth, and as *Languor prolixus grauat medicum, ita relatio prolixa grauat lectorem.* The caſe of *Poſtnati*, I confeſſe, is longer

than

than any of the reſt, and that for three cauſes: Firſt, for that it was an Exchequer chamber caſe, for deciding whereof all the Iudges of England (as the law doth require) did argue openly and at large. Secondly, for that neuer any caſe within mans memorie, was argued by ſo many Iudges in the Exchequer chamber, as this was, there hauing argued the Lord Chauncelor and fourteene Iudges. Thirdly, for the varietie as well of the important matter, as of the ſeuerall kinds of excellent learning and knowledge, deliuered in the arguments of this caſe. Finally, with theſe wiſhes and deſires I conclude, Firſt, that the ſtudious Reader might indeed receiue as great profit and delight in reading this worke, as I did (vnleſſe mine owne iudgement deceiue mè) in compoſing and framing thereof: Secondly, that *quoad eius fieri poſſit, quam plurima legibus ipſis definiantur, quam pauciſsima vero Iudicis arbitrio relinquantur.*

Postnati.

Caluins case, Trin' 6. Iacobi Regis.

IAcobus dei grat' Angl', Scotiæ, Franc', & Hiberniæ Rex fidei defensor &c. Vic' Midd' Salut'. Questus est nobis Robertus Caluyn gener',quòd Richardus Smith & Nicholaus Smith iniustè & sine iudicio disseis.eum de libero tenemẽto suo in Haggard, aliàs Haggerston, aliàs Aggerston, in paroch' Sancti Leonardi in Shorditch infra triginti annos iam vltim̃ elapsos. Et ideo tibi p̃cipimus quòd si p̃dictus Robert' fecerit te securum de clameo suo pros. tunc fac' tenem̃tum ill' reseis. de catallis quæ in ipso capt' fuerint,& ipsum tenem̃tum cum catallis esse in pace vsque diem Iouis proxim̃ post quindeñ Sancti Martini proxim̃ futur'. Et interim fac' xij. liber' & legal' homines de visñ illo videre tenement' ill',& nomina eorum imbr'. Et summ̃ eos p̃ bonos summ̃ quòd tunc sint coram nobis vbicunque tunc fuerimus in Angl' parat' inde facere recognit'. Et pone per vad' & saluos pleg' p̃dictos Richardum & Nicholaum vel balliuos suos si ipsi inuent' non fuerint, quod tunc sint ibi aud' ill' recognit'. Et habeas ibi summ̃,nomina pleg', & hoc breue. T.me ipso apud Westm̃ tertio die Nouembris, Anno regni nostri Angl',Franc',& Hiberñ quinto,& Scotię quadragesimo primo.

Pro quadragint' solid' solut' in Hanaperio.

Kindesley.

Assisa veñ recogñ si Richardus Smith & Nicholaus Smith iniustè & sine iudicio disseis. Robertum Caluyn gener' de libero teñto suo *Midd' Comit*

in Haggard,alias Haggerſton, alias Aggerſton in parochia Sancti Leonardi in Shorditch infra triginta annos iam vltimos elapſos. Et vndeidem Robertus,qui infra ætatem viginť & vnius annoř exiſtit, ꝑ Iohannem Parkinſon & Willihelm̃ Parkinſon gardianos ſuos ꝑ cuř dñi regis hic ad hoc coniunctim & diuiſim ſpecialiter admiſſ. queritur quod diſſeiſ.eum de vno meſſ.cum pertiñ &c. Et prędicti Richardus & Nicholaus ꝑ Willihelm̃ Edwards attornať ſuum veñ, & dicunt quod prædictus Robertus ad bře ſuum prędictum reſpōderi non debet, quia dicūt, quod prædictus Robertus eſt alienigeñ natus quinto die Nouembris anno regni dñi regis nunc Anglię,Franciæ,& Hiberniæ tertio, & Scotiæ triceſimo nono apud Edenborough infra regnum ſuum Scotiæ p̄d̄, ac infra ligeanc' dicti dñi Regis dicti regni ſui Scotiæ, ac extra ligeanc' dicti domini Regis regni ſui Angliæ. Quodque tempore natiuitatis p̄dicti Roberti Caluyn ac diu antea & continue poſtea prædictum regnū Scotiæ ꝑ iura,leges,& ſtatuta eiuſdem regni propria, & non per iura,leges,vel ſtatuta huius Regni Angliæ, regulať & gubernať fuit & adhuc eſt. Et hoc paratť ſunt verificare,vnde peť iudicium ſi prędictus Robertus ad breue ſuum prędictum reſponderi debeat &c. Et prædictus Robertus Caluyn dicit,quod prædictum placitum per prędictos Richardum & Nicholaum ſuperius placitať minus ſufficiens in lege exiſtit ad ipſum Robertum a reſponſ. ad breue ſuum prædictum habend' repellend', quodque ipſe idem Robertus ad placiť ilľ modo & forma prædicť placitať neceſſe non habet nec per legem terrę tenetur reſpondere. Et hoc paratť eſt verificare, vnde petit iudicium: Et quod prædicti Richardus & Nicholaus ad prædictum breue ipſius Roberti reſpondeant. Et prædicti Richardus & Nicholaus, ex quo ipſi ſufficieñ materiam in lege ad ipſum Robertum a reſponſ.ad breue prædictum habend' repellend' ſuperius allegaueř quam ipſi paratť ſunt verificare; Quam quidem materiam prędictus Robertus non dedic'ł, nec ad eam aliqualiter reſpondet,ſed verificať ilľ penitus admittere omnino recuſat,vt prius peť iudicium ſi prædictus Robertus ad breue ſuum prædictum reſponderi debeat &c. Et, quia cuř domini Regis hic de iudicio ſuo de & ſuper premiſſ. reddendo nondum adviſatur, dies inde datť eſt partibus p̄dictis coram domino Rege apud Weſtmonaſteř vſque diem Lunæ proxim̃ poſt octab. Sancti Hillarij de iudicio ſuo inde audiendo, eo quod cuř domini Regis hic inde nondum &c. Et aſſiſa p̄dicta remañ capiend' coram eodem domino Rege vſque eundem diem Lunę ibidem &c. Et vicecom̃ diſtring' recogñ Aſſiſæ prædictæ. Et interim fac' viſum &c. Ad quem diem coram domino Rege apud Weſtmonaſteř veñ tam prædicť Robertus Caluyn per gardianos ſuos prædictos, quam prædicti Richardus Smyth & Nicholaus Smyth per attornať ſuum prædictum. Et, quia cuř domini Regis hic de iudicio

dicio ſuo inde & ſuper premiſſis reddendo nondum aduiſatur, dies inde dat̃ eſt partibus prædictis coram domino Rege apud Weſtm̃ vſque diem Lunæ proxim̃ poſt Craſtiñ aſcenſionis domini de iudicio ſuo inde audiend' eo quod cur̃ domini Regis hic inde nondum &c. Et aſſiſa prædicta remañ vlterius capiend' vſque eundem diẽ Lunæ ibidem &c. Et vicecom̃ ſicut alias diſtring' recogñ aſſiſæ p̃d', & interim fac' viſum &c. Ad quem diem coram domino Rege apud Weſtm̃ veñ tam prædictus Robertus Caluin per gardianos ſuos prædictos, quam prædicti Richardus Smith & Nicholaus Smith p̃ attornat̃ ſuum præd̃ &c. Et quia curia &c.

The queſtion of this matter in law was, whether Robert Caluin the plaintife (beeing borne in Scotland ſince the crowne of England deſcended to his Maieſty) be an alien borne, and conſequently diſabled to bring any reall or perſonall action for any lands within the realme of England. The queſtion.

After this caſe had beene argued in the court of the kings Bench, at the barre, by the counſell learned of either partie, the Iudges of that court vpon conference and conſideration of the weight and importance thereof, adiourned the ſame (according to the auncient and ordinarie courſe and order of law) into the Exchequer chamber, to bee argued openly there; firſt by counſell learned of either partie, and then by all the Iudges of England: where afterwards the caſe was argued by Bacon Sollicitor general, on the part of the plaintife, and by Laur. Hide for the defendant: and afterward by Hobart Attorney generall for the plaintife, and by Serieant Hutton for the defendant: and in Eaſter terme laſt, the caſe was argued by Heron puiſne baron of the Exchequer, & Foſter puiſne Iudge of the court of common Pleas: and on the ſecond day appointed for this caſe, by Crooke puiſne Iudge of the k. Bench, and Altham baron of the Exchequer: the third day by Snigge baron of the Exchequer, and Williams one of the Iudges of the k. Bench: the fourth day by Daniel one of the Iudges of the court of common Pleas, and by Yelverton one of the Iudges of the k. Bench: And in Trinitie terme following, by Warbarton one of the Iudges of the common Pleas, and Fenner one of the Iudges of the kings Bench: and after argued Walmeſley one of the Iudges of the common Pleas, and Tanfield chiefe baron: and at two ſeuerall daies in the ſame Terme, Coke chiefe Iuſtice of the common Pleas, Fleming chiefe Iuſtice of the kings Bench, and Sir Thomas Egerton, Lord Elleſmere, Lord Chancellor of England argued the caſe (the like plea in diſabilitie How this caſe hath proceeded.

of Robert Caluins perſons being pleaded mutatis mutandis in the Chauncerie in a ſuite there for euidence concerning landes of inheritance, and by the Lo. Chauncellor adiourned alſo into the Exchequer chamber, to the end that one rule might ouer-rule both the ſaid caſes.) And firſt (for that I intend to make as ſummarie a Report as I can) I will at the firſt ſet downe ſuch arguments and obiections as were made and drawne out of this ſhort record againſt the plaintife, by thoſe that argued for the defendants. It was obſerued, that in this plea there were foure Nownes, quatuor nomina, which were called nomina operatiua, becauſe from them all the ſaid arguments and obiections on the part of the defendants were drawne: that is to ſay, ¶ 1. Ligeantia (which is twice repeated in the plea, for it is ſayd, Infra ligeantiam domini regis regni ſui Scotiæ, & extra ligeantiam dñi regis regni ſui Angliæ.) ¶ 2. Regnum (which alſo appeareth to be twice mentioned, viz. regnũ Angliæ, and regnũ Scotiæ.) ¶ 3. Leges (which are twice alledged, viz. leges Angliæ, and leges Scotiæ, two ſeuerall and diſtinct lawes.) ¶ 4. Alienigena (which is the concluſion of all, viz. that Robert Caluin is Alienigena.) By the firſt it appeareth, that the defendants do make two ligeances, one of England, and another of Scotland, and from theſe ſeueral ligeances two arguments were framed, which briefely may be concluded thus. Whoſoeuer is borne infra ligeantiam, within the ligeance of King James of his kingdome of Scotland, is Alienigena, an alien borne, as to the kingdome of England: but Robert Caluin was borne at Edenborough, within the legiance of the King of his kingdome of Scotland; therefore Robert Caluin is Alienigena, an alien borne, as to the kingdome of England. 2. Whoſoeuer is borne extra ligeantiam, out of the ligeance of King James of his kingdome of England, is an alien as to the kingdome of England: but the plaintife was borne out of the ligeance of the King of his kingdom of England; therfore the plaintife is an alien &c. Both theſe arguments are drawne from the very words of the plea, viz. Quod prædictus Robertus eſt alienigena, natus 5. Nouembris anno regni domini regis nunc Angliæ &c. tertio apud Edenborough infra regnũ Scotiæ, ac infra ligeantiã dicti doñi regis dicti regni ſui Scotię, ac extra ligeantiã dicti dñi regis regni ſui Angliæ. From the ſeuerall kingdomes, viz. regnum Anglię and regnum Scotiæ, three arguments were drawne. 1. Quando duo iura (imo duo regna) concurrunt in vna perſona, æquum eſt, ac ſi eſſent in diuerſis: but in the K. perſon there concurre two diſtinct & ſeueral kingdomes; therfore it is all one as if they were in diuers perſõs, and

The arguments and obiections on the part of the def.

and consequently the plaintife is an alien as all the Antenati be, for that they were borne vnder the ligeance of another king. 2. Whatsoeuer is due to the kings seuerall politique capacities of the seuerall kingdoms is seuerall and diuided: but ligeance of each nation is due to the kings seuerall politique capacities of the seuerall kingdoms; Ergo, The ligeance of each nation is seuerall and diuided, and consequently the plaintife is an alien, for that they that bee borne vnder seuerall ligeances are aliens one to another. 3. Where the king hath seuerall kingdoms by seueral titles and discents, there also are the ligeances seuerall: but the king hath these two kingdoms by seuerall titles and discents; therefore the ligeances be seuerall. These 3. arguments are collected also from the words of the plea before remembred.

From the seuerall and distinct lawes of either kingdom, they did reason thus. 1. Euery subiect that is borne out of the extent and reach of the lawes of England, cannot by iudgement of those lawes be a naturall subiect to the king, in respect of his kingdom of England: but the plaintife was borne at Edenborough out of the extent and reach of the lawes of England; therefore the pl by the iudgement of the lawes of England cannot be a naturall subiect to the king, as of his kingdom of England. 2. That subiect, that is not at the time and in the place of his birth inheritable to the lawes of England, cannot be inheritable or partaker of the benefits and priuiledges giuen by the lawes of England: but the plaintife at the time and in the place of his birth was not inheritable to the lawes of England (but only to the lawes of Scotland;) therefore he is not inheritable, or to be partaker of the benefits or priuiledges of the lawes of England. 3. Whatsoeuer appeareth to be out of the iurisdictiõ of the lawes of England, cannot be tried by the same lawes: but the plaintifs birth at Edenborough is out of the iurisdiction of the lawes of England; therefore the same cannot be tried by the lawes of Englãd. Which three arguments were drawne from these words of the plea, viz Quodq; tempore natiuitatis prædicti Roberti Caluin ac diu antea, & continue postea, p̃dictum regnum Scotiæ p̃ iura, leges, & statuta eiusdẽ regni propria, & non per iura, leges, seu statuta huius regni Angliæ regulat̃ & gubernat̃ fuit, & adhuc est. From this word Alienigena they argued thus. Euery subiect that is alienæ gentis (id est) alienæ ligeantiæ, est alienigena: but such a one is the plaintife; therefore &c. And to these 9. arguments, all that was spoken learnedly & at large by those that argued against the pl may be reduced.

But it was resolued by the L. Chauncellor & twelue Iudges, viz. the two chiefe Iustices, the chiefe baron, Iustice Fenner, Warbarton, Yeluerton, Daniel, Williams, baron Snig, baron Altham, Iustice Crooke, and baron Heron, that the plaintife was no alien, and consequently that hee ought to be answered in this Assise by the defendant.

How this case was argued by the L. Chancelor and the Iudges.

This case was as elaborately, substantially, and iudicially argued by the Lord Chauncellor, and by my brethren the Iudges, as I euer read or heard of any; and so in mine opinion the weight and consequence of the cause, both in præsenti, & perpetuis futuris temporibus iustly deserued: for though it was one of the shortest and least that euer we argued in this court, yet was it the longest and weightiest that euer was argued in any court; the shortest in sillables, and the longest in substance; the least for the value (and yet not tending to the right of that least) but the wieghtiest for the consequent, both for the present, and for all posteritie. And therfore it was said, that those that had written de fossilibus did obserue, that gold hidde in the bowels of the earth, was in respect of the masse of the whole earth, paruũ in magno: but of this short plea it might be truely said (which is more strange) that here was magnum in paruo. And in the arguments of those that argued for the plaintife I especially noted, That albeit they spake according to their owne heart, yet they spake not out of their owne head and inuention: wherein they followed the counsell giuen in Gods booke, Interroga pristinam generationem (for out of the old fields must come the new corne) & diligenter inuestiga patrum memoriam, and diligently search out the iudgements of our forefathers: and that for diuers reasons. First on our owne part, Hesterni enim sumus & ignoramus, & vita nostra sicut vmbra super terram; for wee are but of yesterdaie (and therefore had need of the wisedome of those that were before vs) and had been ignorant (if wee had not receiued light and knowledge from our forefathers) and our daies vpon the earth are but as a shadow, in respect of the old and auncient daies & times past, wherein the lawes haue beene by the wisdom of the most excellent men, in many successions of ages, by long and continuall experience (the triall of right and truth) fined and refined, which no one man (beeing of so short a time) albeit hee had in his head the wisedome of all the men in the world, in any one age could neuer haue effected or attained vnto. And therefore it is optima regula, qua nulla est verior aut firmior in iure, Neminem oportet esse sapientiorē legibus; no man ought to take

Iob. 8. 8.

take vpon him to be wiser than the lawes. Secondly, in respect of our forefathers: Ipsi (saith the text) docebunt te, & loquentur tibi, & ex corde suo proferunt eloquia, they shall teach thee, and tell thee, and shall vtter the words of their heart, without al equiuocation or mentall reseruation, they (I say) that cannot be daunted with feare of any power aboue them, nor bee dazled with the applause of the popular about them, nor fretted with any discõtentment (the matter of opposition and contradiction) within them; but shall speake the words of their heart, without all affection or infection whatsoeuer.

Also in their arguments of this case concerning an alien, they told no strange hystories, cited no forreine lawes, produced no alien presidents; and that for two causes: the one, for that the lawes of England are so copious in this point, as God willing by the report of this case shall appeare: the other, least their arguments cõcerning an alien born, shold become forrein, strange, and an alien to the state of the question, which being questio iuris, concerning freehold, and inheritance in England, is onely to bee decided by the lawes of this Realme. And albeit I concurred with those that adiudged the plaintife to be no alien, yet doe I find a meere stranger in this case, such a one as the eye of the law (our bookes, and booke cases) neuer saw, as the eares of the law (our Reporters) neuer heard of, nor the mouth of the law (for Iudex est lex loquens) the Iudges our forefather of the law neuer tasted: I say, such a one, as the stomack of the law, our exquisit and perfect Records of pleadings, entries, & iudgements (that make equall and true distribution of all cases in question) neuer digested. In a word, this little plea is a great stranger to the lawes of England, as shall manifestly appeare by the resolution of this case. And now that I haue taken vpon me to make a report of of their arguments, I ought to do the same as truely, fully, and and sincerely, as possibly I can: howbeit, seeing that almost euery Iudge had in the course of his argument a peculiar method, and I must onely hold my selfe to one, I shal giue no iust offence to any, if I challenge that which of right is due to euery Reporter, that is, to reduce the summe and effect of al to such a method, as vpon consideration had of all the arguments, the Reporter himselfe thinketh to be fittest and cleerest for the right vnderstãding of the true reasons and causes of the iudgement and resolution of the case in question.

The method that the Reporter doth vse.

In this case 5. things did fall into consideration. ¶ 1. Ligeantia. ¶ 2. Leges. ¶ 3. Regna. ¶ 4. Alienigena. ¶ 5. what legall

what things did fall into consideratiõ in this case.

legall inconueniences would ensue on either side.

1. Concerning ligeance: 1. It was resolued what ligeance was: 2. How many kinds of ligeances there were: 3. Where ligeance was due: 4. To whom it was due: and lastly how it was due.

2 For the lawes: 1. That ligeance, or obedience of the subiect to the soueraigne, is due by the law of nature: 2. That this law of nature is part of the laws of England: 3. That the law of nature was before any iudiciall or municipall law in the world: 4. That the law of nature is immutable and cannot be changed.

3 As touching the kingdoms: How far forth by the act of law the vnion is already made, and wherein the kingdomes doe yet remaine seperat and diuided.

4 Of Alienigena, an alien borne: 1. What an alien borne is in law: 2. The diuision and diuersitie of aliens: 3. Incidents to euery alien: 4. Authorities in law: 5. Demonstratiue conclusions vpon the premisses, that the plaintife can be no alien.

5. Upon due consideration had of the consequent of this case: what inconueniences legall should follow on either partie.

And these seuerall parts I will in this Report pursue in such order as they haue beene propounded: and first de Ligeantia.

The 1. general part. What ligeance is.

¶ 1. Ligeance is a true and faithfull obedience of the subiect due to his soueraigne. This ligeance and obedience is an incident inseperable to euery subiect; for as soone as he is borne hee oweth by birth-right ligeance and obedience to his soueraigne. Ligeantia est vinculum fidei: and Ligeantia est quasi legis essentia. Ligeantia est ligamentum, quasi ligatio mentium: quia sicut ligamentum est connexio articulorum & iuncturarum &c. As the ligatures or strings do knit together the ioynts of all the parts of the bodie, so doth ligeance ioyne together the soueraigne and all his subiects, quasi vno ligamine. Glanuill, who wrote in the raigne of Hen. 2. lib. 9. cap. 4. speaking of the connexion which ought to be betweene the Lord and tenant that holdeth by homage, saith, That mutua debet esse domini & fidelitatis connexio, ita quod quantum debet domino ex homagio, tantũ illi debet dominus ex dominio, præter solã reuerentiã, and the Lord (saith he) ought to defend his tenant. But betweene the soueraigne and the subiect there is without comparison a higher and greater connexion: for as the subiect oweth to the king his true and faithfull ligeance & obedience, so the soueraigne is to gouerne and protect his subiects,

regere

regere & protegere ſubditos ſuos: **ſo as betweene the Soueraigne and Subiect there is** duplex et reciprocum ligamen; quia ſicut ſubditus regi tenetur ad obedientiam, ita rex ſubdito tenetur ad protectionem: meritò igitur ligeantia dicitur a ligando, quia cõtinet in ſe duplex ligamen. **And therefore it is holden in** 20.H.7.8. **that there is a liege or ligeance betweene the king and the ſubiect. And** Forteſcue cap.13. Rex ad tutelam legis, corporum, & bonorum erectus eſt. **And in the acts of Parliament of** 10.R.2.cap.5. & 11.R.2.cap.1. 14.H.8.ca.2.&c. **Subiects are called liege people: and in the acts of Parliament in** 34.H.8.cap.1.& 35.H.8.cap.3.&c. **the king is called the liege Lord of his Subiects. And with this agreeth** M. Skene **in his booke** de expoſitione verborũ (**which booke was cited by one of the Iudges which argued againſt ỹ plaintife**) **Ligeance is the mutuall bond and obligation betweene the k. and his ſubiects, whereby ſubiects are called his liege ſubiects, becauſe they are bound to obey and ſerue him, and he is called their liege Lord, becauſe he ſhould maintaine & defend them. Whereby it appeareth, that in this point the law of England & of Scotland is all one. Therefore it is truly ſaid, that** protectio trahit ſubiectionem,& ſubiectio protectionem. **And hereby it plainely appeareth, that ligeance doth not begin by the oath in the Leet; for many men owe true ligeance that neuer were ſworne in a Leet, and the ſwearing in a Leet maketh no denization, as the booke is adiudged in** 14.H.4.fol.19. **This word Ligeance is well expreſſed by diuers ſeuerall names or** Synonima **which wee find in our bookes. Sometime it is called the obedience or obeyſance of the ſubiect to the king,** obedientia regi, 9.E.4.7. 9.E.4.6. 2.R.3.2. **in the booke of Entries,** Eiectione firmę 7. 14.H.8.ca.2. 22.H.8.ca.8.&c. **Sometime he is called a naturall liege man that is borne vnder the power of the king,** ſub poteſtate regis 4.H.3. tit̃ Dower. Vide le ſtatute de 11.E.3.cap.2. **Sometime ligeance is called faith,** Fides, ad fidem regis &c. Bracton **who wrote in the raigne of** H.3.lib.5.tractat̃ de exceptionibus,c.24.fo.427. Eſt etiam alia exceptio quę competit ex pſona querentis ꝓpter defectũ nationis, vt ſi quis alienigena qui fuit ad fidẽ regis Franc' &c. **And** Fleta (**which booke was made in the raigne of E.1.**) **agreeth therewith; for** li.6.c.47. de exceptione ex omiſſiõ ꝓticipis **it is ſaid,** vel dicere potuit, ꝙ nihil iuris clamare poterit tanquã ꝓticeps, eo ꝙ eſt ad fidẽ regis Francię, quia alienigenę repelli debent in Anglia ab agẽdo, donec fuer̃ ad fidẽ regis Angł. Vide 25.E.3.de natis vltra mare, **foy & ligeance del Roy Dengliterre: &** Littl.lib.2.ca. Homage, **ſalue le foy,** q̃ ieo doy a nr̃e ſr̃ le Roy: & Glanuil, lib.9.ca.1. Salua fide debita dño Regi et hęredib' ſuis. **Sometimes ligeance is called**

called ligealtie, 22. Aſſ. Pl. 25. By all which it euidently appeareth, that they that are borne vnder the obediẽce, power, faith, ligealty, or ligeance of the king, are naturall ſubiects and no aliens. So as, ſeeing now it doth appeare what ligeãce is, it followeth in order, that we ſpeake of the ſeueral kinds of ligeãce. But herein we need to be very wary, for this caueat the law giueth, vbi lex nõ diſtinguit, nec nos diſtinguere debemus: and certainly lex non diſtinguit, but where omnia mẽbra diuidentia are to be found out and proued by the law it ſelfe.

How many kind of ligeances there be.

¶ 2 There is found in the law 4. kind of ligeãces: the firſt, is ligeantia naturalis, abſoluta, pura, & indefinita; & this originally is due by nature and birth-right, and is called alta ligeantia, and he that oweth this is called ſubditus natus. The 2. is called ligeãtia acquiſita, not by nature but by acquiſition or denization, being called a denizen or rather donaizon, becauſe he is ſubditus datus. The 3. is ligeantia localis, wrought by the law, and that is when an alien that is in amitie commeth into England, becauſe as long as hee is within England, he is within the kings protection; therefore, ſo long as he is there, he oweth vnto the king a locall obedience or ligeãce, for that the one (as it hath bin ſaid) draweth the other. The 4. is a legall obedience or ligeance, which is called legall, becauſe the municipall lawes of this realme haue preſcribed the order and forme of it; & this to be done vpon oath at the Torne or Leet. The firſt, that is, ligeance naturall &c. appeareth by the ſaid acts of Parliament, wherein the king is called natural liege Lord, & his people natural liege ſubiects: this alſo doth appeare in the inditements of treaſon (which of al other things are the moſt curiouſly and certainely indited and penned:) for in the inditement of the Lo. Dacre in 26. H. 8. it is ſaid, p̃dictus dñus Dacre debitũ fidei & ligeantiæ ſuæ q̃ præfato dño regi naturaliter & de iure impendere debuit, minime curans &c. And Reginald Poole was indited in 30. H. 8. for committing treaſon cont̃ dñm regẽ ſupremum & naturalẽ dñm ſuum. And to this end were cited the inditemẽt of Edward duke of Somerſet in 5. E. 6. and many others both of ancient and later times. But in the inditement of treaſon of Iohn Dethicke in 2. & 3. Ph. & Mar. it is ſaid, q̃ p̃d Iohannes machinãs &c. p̃d dñm Philippũ & dñam Mariã ſupremos dños ſuos, and omitted (naturales) becauſe king Philip was not his naturall liege Lord. And of this point more ſhall be ſaid when we ſpeake of locall obedience. The ſecond is ligeantia acquiſita, or denization. And this in the bookes & records of the law appeareth to be threefold: 1. abſolute, as the common denizations be, to them and their heires

Ligeantia naturalis.

Ligeantia acquiſita.

heires without any limitation or restraint: 2. limited, as when the King doth graunt letters of denization to an alien, and to the heires males of his body, as it appeareth in 9.E.4.fol.7. in Baggots case; or to an alien for terme of his life, as was graunted to Iohn Reynel, 11.H.6. 3. it may be graunted vpon condition; for cuius est dare, eius est disponere, whereof I haue seene diuers presidents. And this denization of an alien may be effected 3. maner of waies: by parliament, as it was in 3. H.6.55. in Dower: by letters patents, as the vsuall manner is: and by conquest, as if the King and his subiects should conquer another kingdome or dominiõ, as well Antenati as Postnati, as well they which fought in the field, as they which remained at home for defence of their countrey, or imployed elsewhere, are all denizens of the kingdome or dominion conquered. Of which point more shall be said hereafter.

3 Concerning the locall obedience, it is obseruable, that as there is a locall protection on the kings part, so there is a locall ligeance of the subiects part. And this appeareth in 4. Mar. Br. 32. & 3. & 4. Ph. & Ma. Dier 144. Sherley a French man, being in amitie with the King, came into England, and ioined with diuers subiects of this Realme in treason against the King and Queene, and the inditement concluded contra ligeantię suæ debitum; for hee ought to the King a locall obedience, that is, so long as hee was within the kings protection: which locall obedience, beeing but momentanie and incertain, is strong enough to make a natural subiect; for if he hath issue here, that issue is a natural borne subiect: à fortiori he that is borne vnder the naturall and absolute ligeance of the King (which as it hath bin said is alta ligeantia) as the pl' in the case in question was, ought to bee a naturall borne subiect; for localis ligeantia est ligeantia infima, & minima, & maxime incerta. And it is to be obserued, that it is nec cœlum, nec solum, neither the clymat nor the soyle, but ligeantia and obedientia that make the subiect borne: for if enemies should come into the realme, and possesse a towne or fort, and haue issue there, that issue is no subiect to the King of England, though he be borne vpon his soile, and vnder his meridian, for that he was not borne vnder the ligeance of a subiect, nor vnder the protection of the K. And concerning this locall obedience, a president was cited in Hill. 36. Elizab. when Stephano Farrara de Gama, and Emanuel Lewes Tinoco, two Portugals borne, comming into England vnder Queene Elizabeths safe-conduct, and liuing here vnder her protection, ioyned with doctor Lopez in treason within this

Ligeantia localis.

this Realme against her Maiestie: And in this case two points were resolued by the Iudges: First, that their indictment ought to begin, that they intended treason contra dñam Reginam, &c. Omitting these words (naturalem dñam suam:) and ought to conclude contra ligeantiæ suę debitum. But if an alien enemy come to inuade this realme, and be taken in warre, he cannot be indicted of treason: for the indictmēt cannot conclude contra ligeantię suę debitum, for he neuer was in the protection of the king, nor euer ought any maner of ligeance vnto him, but malice & enmity; and therefore he shall bee put to death by martial law. And so it was in anno 15. H. 7. in Parkin Warbecks case, who being an alien borne in Flaunders, fained himselfe to be one of the sonnes of Edward the fourth, and inuaded this Realme with great power, with an intent to take vpon him the dignitie royall: but beeing taken in the warre, it was resolued by the Iustices, that he could not bee punished by the common law: but before the Constable and Marshall (who had speciall commission vnder the great Seale, to heare and determine the same according to martiall law) hee had sentence to bee drawne, hanged, and quartered, which was executed accordingly. And this appeareth in the booke of Griffeth Atturney generall, by an extract out of the booke of Hobart, Atturney generall to king H. 7.

Ligeantia legalis.

4 Now are we to speake of legall ligeance, which in our bookes, viz. 7. E. 2. tit Auowrie 211. 4. E. 3. fol. 42. 13. E. 3. tit Auowrie 120. &c. is called Suit Royall, because that the ligeance of the subiect is onely due vnto the king. This othe of ligeance appeareth in Britton, who wrot in anno 5. Ed. 1. cap. 29. (and is yet cōmonly in vse to this day in euerie Leet) and in our bookes; the effect whereof is: You shall sweare, that from this day forward, you shall bee true and faithfull to our Soueraigne Lord King Iames, and his heires, and truth and faith shall beare of life and member, and terrene honour, and you shall neither know nor heare of any ill or dammage intended vnto him, that you shall not defend: So helpe you Almightie God. The substance and effect hereof is (as hath beene said) due by the law of nature, ex institutione naturæ, as hereafter shall appeare; the forme and addition of the othe is, ex prouisione hominis. In this othe of ligeance 5. things were obserued: 1. That for the time, it is indefinite, and without limit, from this day forward: 2. Two excellent qualities are required, that is, to be true and faithfull: 3. To whom? to our Soueraigne Lord the King and his heires: (And albeit Britton doth say, to the king of England, that is spoken propter excellentiam, to designe the person, and not

to

to confine the ligeance: for a Subiect doth not sweare his ligeance to the King, onely as King of England, and not to him as King of Scotland, or of Ireland &c. but generally to the King:) 4. in what manner? and faith and troth shall beare &c. of life and member; that is, vntill the letting out of the last drop of our dearest heart blood: 5. Where, and in what places ought these things to be done? in all places whatsoeuer; for, you shall neither know nor heare of any ill or damage, &c. that you shall not defend &c. so as naturall ligeance is not circumscribed within any place. It is holden 12. H. 7. 18. b. That hee that is sworne in the Leete, is sworne to the King for his ligeance, that is, to be true and faithfull to the King: and if he bee once sworne for his ligeance, hee shall not bee sworne againe during his life. And all Letters patents of denization be, that the patentee shall behaue himselfe tanquam verus & fidelis ligeus domini Regis. And this oath of Ligeance at the Tourne and Leet was first instituted by King Arthur; for so I read, Inter leges sci Edouardi Regis ante conquestum 3. cap. 35. Et quod omnes principes & comites, proceres, milites, & liberi homines debent iurare &c. in Folkemote, & similiter omnes proceres regni, & milites, & liberi homines vniuersi totius regni Britaniæ facere debent in pleno Folkemote fidelitatem domino Regi &c. Hanc legem inuenit Arthurus qui quondam fuit inclitissimus Rex Britonum &c. huius legis authoritate expulit Arthurus Rex Saracenos & inimicos a regno &c. & huius legis authoritate Etheldredus Rex vno & eodem die per vniuersum regnum Danos occidit. Vide Lambert inter Regis Edouardi &c. fol. 135. & 136. By this it appeareth, when and from whom this legall ligeance had his first institution within this Realme. Ligeantia in the case in question, is meant and intended of the first kind of ligeance, that is, of the ligeance naturall, absolute &c. due by nature and birth right. But if the plaintifes father be made a denizen, and purchase lands in England to him and his heires, and die seised, this land shall neuer discend to the plaintife, for that the King by his Letters Patents may make a denizen, but cannot naturalize him to all purposes, as an act of Parliament may doe; neither can Letters patents make any inheritable in this case, that by the common Law cannot inherite. And herewith agreeth 36. H. 8. tit Denizen, Br. 9.

Homage in our bookes is twofold, that is to say, Homagium Ligeum, and that is as much as ligeance, of which Bracton speaketh lib. 2. cap. 35. fol. 79. Soli Regi debetur sine dominio, seu seruitio: Homage is twofold.

and there is Homagium feudale, which hath his originall by tenure. In Fit. Nat. Bre. 269. there is a writ for reſpectuing of this later homage (which is due ratione feodi ſiue tenurę:) Sciatis quod reſpectuamus homagium nobis de terr̃ & ten̄tis quę tenentur de nobis in capite debit̄. But Homagiū ligeū, i. Ligeantia, is inherent and inſeparable, and cannot be reſpectued.

Where naturall ligeance is due.

¶ 3. Now are we come vnto (and almoſt paſt) the conſideration of this circumſtance, where naturall ligeance ſhould bee due: For by that which hath beene ſaid it appeareth, that ligeance, and faith and truth, which are her members and parts, are qualities of the mind and ſoule of man, and cannot bee circumſcribed within the predicament of vbi, for that were to confound predicaments, and to goe about to driue (an abſurd and impoſſible thing) the predicament of qualitie into the predicament of vbi. Non reſpondetur ad hanc queſtionem, vbi eſt? to ſay, Verus et fidelis ſubditus eſt: ſed ad hanc queſtionem, qualis eſt? rectè & aptè reſpondetur, verus & fidelis ligeus &c. eſt. But yet for the greater illuſtration of the matter, this point was handled by it ſelfe, and that ligeance of the ſubiect was of as great an extent and latitude, as the royall power and protection of the king, and è conuerſo. It appeareth by the ſtatute of 11. H. 7. cap. 1. and 2. E. 6. ca. 2. that the ſubiects of England are bound by their ligeance to go with the king, &c. in his warres, as well within the Realme &c. as without. And therefore we daily ſee, that when either Ireland or any other of his Maieſties dominions bee infeſted with inuaſion or inſurrection, the king of England ſendeth his ſubiects out of England, and his ſubiects out of Scotland alſo into Ireland, for the withſtanding or ſuppreſſing of the ſame, to the end his rebels may feele the ſwords of either nation. And ſo may his ſubiects of Gernſey, Jerſey, Iſle of Man &c. be cõmanded to make their ſwords good againſt either rebel or enemie, as occaſion ſhall be offered: whereas if naturall ligeance of the ſubiects of England ſhould be locall, that is, cõfined within ỹ realm of England or Scotland &c. thẽ were not they bound to goe out of the continent of the realme of England or Scotland &c. And the opinion of Thirninge in 7. H. 4. tit̄ Protect̄ 100. is thus to be vnderſtood, that an Engliſh ſubiect is not compellable to go out of the realme wout wages, according to the ſtatutes of 1. E. 3. c. 7. 18. E. 3. c. 8. 18. H. 6. c. 19. &c. 7. H. 7. c. 1. 3 H. 8. ca. 5. &c. In añ 25. E. 1. Bigot Earle of Norff. and Suff. and Earle marſhall of England, and Bohun Earle of Heref. & high Conſtable of Englād, did exhibit a petition to ỹ K. in Frẽch (which I haue ſeen anciẽtly recorded) on the

the behalfe of the commons of England, concerning how and in what sort they were to be imployed in his Maiesties warres out of the realme of England: and the Record saith, that, post multas & varias altercationes, it was resolued, they ought to go but in such manner and forme as after was declared by the said Statutes, which seeme to be but declaratiue of the common law. And this doth plentifully and manifestly appeare in our bookes, being truly and rightly vnderstood. In 3. H. 6. tit Protection 2. one had the benefit of a protection, for that he was sent into the K. warres in comitiua of the protector: and it appeareth by the record and by the Chronicles also, that this imployment was into France, the greatest part thereof then being vnder the kings actuall obedience, so as the subiects of England were imploied into Frãce for the defence and safetie thereof: In which case it was obserued, that seeing the protector, who was Pro-Rex went, the same was adiudged a voyage royall. 8. H. 6. fol. 16. the Lord Talbot went with a company of Englishmen into Fraunce, then also being for the greatest part vnder the actuall obedience of the K. who had the benefit of their protections allowed vnto thē. And here were obserued the words of the writ in the Register, fol. 88. where it appeareth, that mē were imployed in the kings warres out of the realme per præceptum nostrum, and the vsuall words of the writ of protection be, in obsequio nostro. 32. H. 6. fol. 4. it appeareth, that Englishmen were pressed into Guyan, 44. Ed. 3. 12. into Gascoigne with the duke of Lancaster, 17. H. 6. tit. Protection, into Gascoigne with the Earle of Huntingdon, steward of Guyan, 11. H. 4. 7. into Ireland, and out of this realme with the Duke of Gloucester and the Lord Knolles. Vide 19. H. 6. 35. And it appeareth in 19. Ed. 2. tit. Auowry 224. 26. Ass. 66. 7. H. 4. 19. &c. that there was forinsecum seruitium forreine seruice, which Bracton, fol. 36. calleth regale seruitium: and in Fitz. N. B. 28. that the king may send men to serue him in his warres beyond the sea. But thus much (if it be not in so plaine a case too much) shall suffice for this point for the kings power, to commaund the seruice of his Subiects in his warres out of the Realme. Whereupon it was concluded, That the ligeance of a naturall borne subiect, was not locall, and confined onely to England. Now let vs see what the Law sayth in time of peace, concerning the kings protection and power of commaund, as well without the Realme as within, that his Subiects in all places may be protected from violence, and that Iustice may equally be administred to all his Subiects.

Caluins caſe.

In the Regiſter, fol. 25. b. Rex vniuerſis & ſingulis admirallis, caſtellanis, cuſtodibus caſtrorum, villarum, & aliorum fortaliciorum præpoſitis, vicecom̃, maioribus, cuſtumarijs, cuſtodibus portuum, & aliorum locorum maritimorum balliuis, miniſtris, & alijs fidelibus ſuis, tàm in tranſmarinis quam in ciſmarinis partibus, ad quos &c. Salutem. Sciatis quod ſuſcepimus in protectionem & defenſionem noſtram, necnon ad ſaluam & ſecuram gardiam noſtram; W. veniendo in regnum noſtrum Angl' & poteſtatem noſtram, tam per terram quam per mare cum vno valetto ſuo, ac res ac bona ſua quæcunque, ad tractand' cum dilecto nr̃o & fideli L. pro redemptione priſonarij ipſius L. infra regnum & poteſtatem noſtra prædict', p̃ ſex menſes morando, & exinde ad propria redeundo. Et ideo &c. quod ipſum W. cum valetto, rebus & bonis ſuis p̃dictis veniendo in regnum & poteſtatem noſtrã p̃d' tam p̃ terram quã per mare ibidem vt prędictum eſt ex cauſa antedicta morando, & exinde ad propria redeundo, manuteneatis, protegatis, & defendatis: non inferentes eis &c. ſeu grauamen. Et ſi quid eis forisfactum &c. reformari faciatis. In cuius &c. p̃ ſex menſes duratur̃. T. &c. **In which writ 3. things are to be obſerued: 1. that the king hath** fidem & fideles in partibus tranſmarinis: 2 **that he hath** protectionem in partibus tranſmarinis: 3. **that he hath** poteſtatem in partibus tranſmarinis.

In the Regiſter, fo. 26. Rex vniuerſis & ſingulis admirallis, caſtellanis, cuſtodibus caſtror̃, villarum, & aliorum fortaliciorum præpoſitis, vicecom̃, maioribus, cuſtumarjs, cuſtodibus portuum, & aliorum locorum maritimorum balliuis, miniſtris & alijs fidelibus ſuis tam in tranſmarinis quam in ciſmarinis partibus ad quos &c. Salutem. Sciatis quod ſuſcepimus in protectionem & defenſionem noſtram, nec non in ſaluum & ſecurum conductum noſtrum I. valettum P. & L. Burgenſium de Lyons obſidum noſtrorum, qui de licentia noſtra ad partes tranſmarinas profecturus eſt, pro finantia magiſtrorum ſuorum prædictor̃ obtinenda vel deferenda, eundo ad partes prædictas, ibidem morando, & exinde in Angliam redeundo. Et ideo vobis mandamus, quod eidem I. eundo ad partes prædictas, ibidem morando, & exinde in Angliam redeundo, vt prædict' eſt, in perſona, bonis, aut rebus ſuis, non inferatis, ſeu quantum in vobis eſt ab alijs inferri permittatis iniuriam, moleſtiam &c. aut grauamen. Sed eum potius ſaluum & ſecurum conductum, cum per loca, paſſus, ſeu diſtrictus veſtros tranſierit, & ſuper hoc requiſiti fueritis, ſuis ſumptibus habere faciatis. Et ſi quid eis forisfactum fuerit &c. reformari faciatis. In cuius &c. per tres annos duratur'. T. &c. **And certainely this was, when Lyons in France (bordering vpon Burgundy, an auncient friend to England) was vnder the actuall obedience of king Henry the 6. For the king commanded** fidelibus ſuis, **his faithful magiſtrats there, that**

that if any iniurie were there done, it ſhould be by them reformed and redreſſed, and that they ſhould protect the party in his perſon and goods in peace. In the Regiſter, fo. 26. two other writs: Rex omnibus ſeneſchallis, maioribus, iuratis, paribus, præpoſitis, balliuis & fidelibus ſuis in ducatu Acquitaniæ ad quos &c. ſalutem. Quia dilecti nobis T. & A. ciues ciuitatis Burdegaliæ coram nobis in Cancellaria noſtra Angliæ & Aquitaniæ iura ſua proſequentes, & metuentes ex veriſimilibus coniecturis per quoſdam ſibi comminantes tam in corpore quam in rebus ſuis, ſibi poſſe graue damnum inferri, ſupplicauerunt nobis ſibi de protectione regia prouidere: nos volentes dictos T. & A. ab oppreſſionibus indebitis præſeruare, ſuſcepimus ipſos T. & A. res ac iuſtas poſſeſſiones & bona ſua quæcunque in protectionem & ſaluam gardiam noſtram ſpecialem. Et vobis & cuilibet veſtrum iniungimus & mandamus, quod ipſos T. & A. familias, res ac bona ſua quæcunque a violentijs & grauaminibus indebitis defendatis, & ipſos in iuſtis poſſeſſionibus ſuis manuteneatis. Et ſi quid in præiudiciũ huius protectionis & ſaluæ gardiæ noſtrę attentatum inueneritis, ad ſtatum debitum reducatis. Et ne quis ſe poſſit per ignorantiam excuſare, præſentem protectionem & ſaluam gardiã nr̃am faciatis in locis de quibus requiſiti fueritis infra diſtrict' veſtrũ, publicè intimari, inhibentes omnibus & ſingulis ſub pœnis grauibus, ne dictis A. & T. ſeu famulis ſuis in perſonis ſeu rebus ſuis, iniuriam, moleſtiam, damnum aliquod inferant, ſeu grauamen: & penocellas noſtras in locis & bonis ipſorum T. & A. in ſignum protectionis & ſaluæ gardiæ memoratæ, cum ſuper hoc requiſiti fueritis, apponatis. In cuius &c. Dat̃ in palatio noſtro Weſtm̃ ſub magni ſigilli teſtimonio, ſexto die Auguſti anno 44. E. 3. Rex vniuerſis & ſingulis ſeneſchallis, conſtabularijs, caſtellanis, prępoſitis, miniſtris, & omnibus balliuis & fidelibus ſuis in dominio nr̃o Aquitaniæ conſtitutis ad quos &c. Salutem. Volentes G. & R. vxorem eius fauore proſequi gratioſè: ipſos G. & R. homines & familias ſuas, ac iuſtas poſſeſſiones, & bona ſua quæcunque, ſuſcepimus in protectionem et defenſionem noſtram, necnon in ſaluam gardiam noſtram ſpecialem. Et ideo vobis & cuilibet veſtrum iniungimus & mandamus, quod ipſos G. & R. eorum homines, familias ſuas, ac iuſtas poſſeſſiones & bona ſua quæcunque manuteneatis, protegatis, & defendatis: non inferentes eis ſeu quantum in vobis eſt ab alijs inferri permittentes, iniuriam, moleſtiam, damnum, violentiam, impedimentum aliquod ſeu grauamen. Et ſi quid eis forisfact', iniuriatum, vel contra eos indebite attentatum fuerit, id eis ſine dilatione corrigi, & ad ſtatum debitum reduci faciatis, prout ad vos & quemlibet veſtrum noueritis pertinere: penocellas ſuper domibus ſuis in ſignum præſentis ſaluæ gardiæ noſtræ (prout moris fuerit) facientes. In cuius &c. per vnum annum duraturr̃. T. &c.

By all which it is manifeſt, that the protection and gouernment of the King is generall ouer all his dominions and kingdomes, as well in time of peace by iuſtice, as in time of warre by the ſword, and that all be at his commaund, and vnder his obedience. Now ſeeing power and protection draweth ligeance, it followeth, that ſeeing the Kings power, commaund, and protection extendeth out of England, that ligeance cannot bee locall, or confined within the bounds thereof. He that is abiured the Realme, Qui abiurat regnum amittit regnum, ſed non regem, amittit patriam, ſed non patrem patriæ: for notwithſtanding the abiuration, hee oweth the King his ligeance, and hee remaineth within the Kings protection; for the King may pardon and reſtore him to his countrey againe. So as ſeeing that ligeance is a qualitie of the mind, and not confined within any place; it followeth, that the plea that doth confine the ligeance of the plaintife to the kingdome of Scotland, Infra ligeantiam regis regni ſui Scotiæ, & extra ligeantiam regis regni ſui Angliæ, whereby the defendants do make one locall ligeance for the naturall ſubiects of England, and another locall ligeance for the naturall ſubiects of Scotland, is vtterly inſufficient, and againſt the nature and qualitie of naturall ligeance, as often it hath beene ſaid. And Coke, chiefe Iuſtice of the Court of Common pleas, cited a ruled caſe out of Hinghams Reports, Tempore E. 1. which in his argument he ſhewed in Court written in parchment, in an auncient hand of that time. Conſtance de N. brought a writ of Ayel againſt Roger de Cobledike, and others, named in the writ, and counted, that from the ſeiſin of Roger her grandfather it diſcended to Gilbert his ſonne, and from Gilbert to Conſtance, as daughter and heire. Sutton dit, Sir, el ne doit eſte reſponde, pur ceo que el eſt Francois & nient de la ligeãce ne a la foy Dengliterre, & demaund iudgement ſi el doit action auer: that is, ſhe is not to be anſwered, for that ſhe is a Frenchwoman, & not of the ligeance nor of the faith of England, and demaund iudgement, if ſhe this action ought to haue. Bereford (then chiefe Iuſtice of the Court of Common pleas) by the rule of the Court diſalloweth the plea, for that it was too ſhort, in that it referred ligeance and faith to England, and not to the King: and thereupon Sutton ſaith as followeth: Sir, nous voilomus auerre que el neſt my de la ligeance Dengliterre, ne a la foy le Roy & demaund iudgement, et ſi vous agardes que el doit eſte reſponde, nous dirromus aſſets: that is, Sir, we will auerre, that ſhe is not of the ligeance of England, nor of the faith of the King, & demaund iudgemẽt &c.

Cobledikes caſe in tẽps E. 1. reported by Hingham

Which

which later words of the plea (nor of the faith of the King) referred faith to the King indefinitely and generally, and restrayned not the same to England, and thereupon the plea was allowed for good, according to the rule of the Court: for the booke saith, that afterward the defendant desired leaue to depart from her writ. The rule of that case of Cobledike did (as Coke chiefe Iustice said) ouerrule this case of Caluin, in the very point now in question; for that the plea in this case doth not referre faith or ligeance to the King indefinitely and generally, but limitteth and restraineth faith and ligeance to the kingdome: Extra ligeantiam regis regni sui Angliæ, out of the ligeance of the King of his kingdome of England: which afterwards the Lo. Chauncelor and the chiefe Iustice of the Kings Bench, hauing copies of the said auncient Report, affirmed in their arguments. So as this point was thus concluded, Quod ligeantia naturalis nullis claustris coercetur, nullis metis refrænatur, nullis finibus premitur.

¶ 475. By that which hath beene said it appeareth, that this ligeance is due onely to the King; so as therein the question is not now, cui sed quomodo debetur. It is true, that the King hath two capacities in him: one a naturall body, being discended of the blood royall of the Realme; and this body is of the creation of almightie God, and is subiect to death, infirmitie, and such like: the other is a politique body or capacitie, so called, because it is framed by the policie of man (and in 21.E.4.39.b. is called a misticall body:) and in this capacitie the King is esteemed to be immortall, inuisible, not subiect to death, infirmitie, infancie, nonage &c. Vide Pl.Com. in le case de Seignior Barkley 238. & in le case del Duchie 213. Vide 6.E.3.291. & 26.Ass. pl.54. Now seeing the King hath but one person, and seueral capacities, and one politique capacitie for the Realme of England, and another for the Realme of Scotland, it is necessarie to be considered, to which capacitie ligeance is due. And it was resolued, that it was due to the naturall person of the King (which is euer accompanied with the politique capacitie, and the politique capacitie as it were appropriated to the naturall capacitie) and is not due to the politique capacitie onely, that is, to his crowne or kingdome, distinct from his naturall capacitie, and that for diuers reasons. First, euery subiect (as it hath beene affirmed by those that argued against the plaint) is presumed by law to be sworne to the King, which is to his naturall person; and likewise the King is sworne to his subiect (as it appeareth in Bracton, lib.3. de actionibus, cap.9. fol.107.) which oath he taketh in his naturall per-

To whom and how ligeãce is due.

perſon: for the politique capacitie is inuiſible & immortall; nay, the politique body hath no ſoule, for it is framed by the policie of man. 2. In all inditements of Treaſon, when any do intend or compaſſe mortem et deſtructionem dñi Regis (which muſt needs be vnderſtood of his natural body, for his politique body is immortall, and not ſubiect to death) the inditement concludeth contra ligeantię ſuę debitum, ergo the ligeance is due to the natural body. Vide Fit. Iuſtice of peace 53. & Plo. Com. 384. in the earle of Leiceſters caſe. 3. It is true, that the king in genere dieth not, but, no queſtion, in indiuiduo he dieth: as for example, H. 8. E. 6. &c. and Q. Elizabeth died, otherwiſe you ſhould haue many kings at once. In 2. & 3. Ph. & Ma. Dier 128. one Conſtable diſperſed diuers bils in the ſtreets in the night, in which was written, that king E. 6. was aliue, and in Fraunce &c. and in Colman ſtreet in London he pointed to a young man, and ſaid that he was king Edward the ſixt. And this being ſpoken de indiuiduo (and accompanied with other circumſtances) was reſolued to be high Treaſon: for the which Conſtable was attainted and executed. 4. A bodie politique (being inuiſible) can as a body politique neither make nor take homage. Vide 33. H. 8. tit. Fealtie, Brooke. 5. In fide, in faith or ligeance nothing ought to be fained, but ought to be ex fide non ficta. 6. The king holdeth the kingdome of England by birthright inherent, by diſcent from the blood royall, whereupon ſucceſſion doth attend: and therefore it is vſually ſayd to the king, his heires & ſucceſſors, wherein heires is firſt named, and ſucceſſor is attendant vpon heires. And yet in our ancient bookes, ſucceſſion and ſucceſſor are taken for hereditance and heires. Bracton lib. 2. de acquirendo rerum dominio, cap. 29. Et ſciendum eſt, quod hæreditas eſt ſucceſſio in vniuerſum ius quod defunctus anteceſſor habuit, ex quacunque cauſa acquiſitionis vel ſucceſſionis, & alibi affinitatis iure nulla ſucceſſio permittitur. But the title is by diſcent: by Queene Elizabeths death the crowne and kingdome of England diſcended to his Maieſty, and hee was fully and abſolutely thereby king, without any eſſentiall ceremonie or act to be done ex poſt facto: for coronation is but a royall ornament and ſolemnization of the royall diſcent, but no part of the title. In the firſt yeare of his Maieſties raigne, before his Maieſties coronation, Watſon and Clarke, ſeminarie prieſts and others were of opinion, that his Maieſtie was no complete and abſolute king before his coronation, but that coronation did adde a confirmation and perfection to the diſcent: and therefore (obſerue their damnable and damned conſequent) that they by

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ſtrength and power might before his coronation take him and his royall iſſue into their poſſeſſion, keepe him priſoner in the Tower, remoue ſuch counſellors and great officers as pleaſed them, and conſtitute others in their places &c. and that theſe and others of like nature could not be Treaſon againſt his maieſtie, before he were a crowned king. But it was clearely reſolued by all the Iudges of England, that preſently by the diſcent his Maieſty was completely and abſolutely king, without any eſſentiall ceremonie or act to be done ex poſt facto, and that coronation was but a royall ornament, and outward ſolemnization of the diſcent. And this appeareth euidently by infinite Preſidents and booke caſes, as (taking one example in a caſe ſo cleere for all) king Henry the ſixt was not crowned vntill the eight yeare of his raigne, and yet diuers men before his coronation were attainted of Treaſon, of Felony, &c. and he was as abſolute and complete a king, both for matters of iudicature, as for graunts &c. before his coronation, as he was after, as it appeareth in the Reports of the 1. 2. 3. 4. 5. 6. and 7. yeares of the ſame king. And the like might be produced for many other kings of this Realme, which for breuitie in a caſe ſo cleare I omit. By which it manifeſtly appeareth, that by the Lawes of England there can be no interregnum within the ſame. If the king be ſeiſed of land by a defeaſible title, and dieth ſeiſed, this diſcent ſhall tolle the entry of him that right hath, as it appeareth by 9. E. 4. 51. But if the next king had it by ſucceſſion, that ſhould take away no entry, as it appeareth by Litt. fol. 97. If a diſſeiſor of an infant conuey the land to the king, who dieth ſeiſed, this diſcent taketh away the entry of the infant, as it is ſaid in 34. H. 6. fol. 34. 43. lib. Aſſ. pl. 6. Plow. Com. 234. where the caſe was, that king H. 3. gaue a manor to his brother the Earle of Cornwall in taile (at what time the ſame was a fee ſimple conditionall) king H. 3. died, the Earle before the ſtatute of Donis condicional' (hauing no iſſue) by deed exchanged the manor with warrãty for other lands in fee, and died without iſſue, and the warranty and aſſets diſcended vpon his nephew king Edward the firſt: and it was adiudged, that this warranty and aſſets, which diſcended vpon the naturall perſon of the king, barred him of the poſſibilitie of reuerter. In the raigne of Ed. 2. the Spencers, the father and the ſonne, to couer the Treaſon hatched in their hearts, inuented this damnable and damned opinion, That homage and oath of ligeance was more by reaſon of the kings Crowne (that is, of his politique capacitie) then by reaſon of the perſon of the king,

King, vpon which opinion they inferred execrable and detestable consequents: 1. If the King doe not demeane himselfe by reason in the right of his Crowne, his lieges are bound by oath to remoue the King: 2. Seeing that the King could not be reformed by suit of Law, that ought to be done per aspertee: 3. That his lieges be bound to gouerne in aid of him, and in default of him. All which were condemned by two Parliaments, one in the raigne of E.2. called exilium Hugonis le Spencer, and the other in Anno 1.E.3.cap.1. Bracton lib.2. de acquirendo rerum dominio, cap.24. fol.55. sayth thus, Est enim corona Regis facere iusticiam & iudicium, & tenere pacem, & sine quibus corona consistere non potest nec tenere; huiusmodi autem iura siue iurisdictiones ad personas vel tenementa transferri non poterunt, nec a priuata persona possideri, nec vsus nec executio iuris, nisi hoc datum fuit ei desuper, sicut iurisdictio delegata delegari non poterit quin ordinaria remaneat cum ipso Rege. Et libro 3. de actionibus, ca.9. fol.107. Seperare autem debet Rex, cum sit dei vicarius in terra, ius ab iniuria, æquum ab iniquo, vt omnes sibi subiecti honestè viuant, et qd' nullus alium lædat, et qd' vnicuiq; qd' suũ fuerit recta contributione reddatur. In respect wherof one sayth, That Corona est quasi cor ornans, cuius ornamenta sunt misericordia et iusticia. And therefore a Kings Crowne is an Hieroglyphicke of the Lawes, where Iustice &c. is administred: for so sayth P. Val. lib.41. pag.400. Coronam dicimus legis iudicium esse, propterea quod certis est vinculis complicata, quibus vita nostra veluti religata coercetur. Therefore if you take that which is signified by the Crowne, that is, to doe iustice and iudgement, to maintaine the peace of the land &c. to seperate right from wrong, and the good from the ill; that is to be vnderstood of that capacitie of the King, that in rei veritate hath capacitie, and is adorned and indued with indowments, as well of the soule as of the body, and thereby able to doe iustice and iudgement, according to right and equitie, and to maintaine the peace &c. and to find out and discerne the truth, and not of the inuisible and immortall capacitie that hath no such indowments, for of it selfe it hath neither soule nor body. And where diuers bookes and acts of parliament speake of the ligeance of England, as 31.E.3.tit Cosinage 5.42.E.3.2.13.E.3.tit.Brē 677. 25.E.3. statuto 2. de natis vltra mare; All these and other speaking briefely in a vulgar manner (for loquendum vt vulgus) and not pleading (for sentiendum vt docti) are to bee vnderstood of the ligeance due by the people of England to the King: For no man will affirme, that England it selfe, taking it for the Continent thereof, doth owe

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any ligeance or faith, or that any faith or ligeance should bee due to it: but it manifestly appeareth, that the ligeance or faith of the Subiect is proprium quarto modo to the king, omni, soli, & semper. And oftentimes in the Reports of our booke cases, and in Acts of Parliament also, the Crowne or kingdome is taken for the king himselfe, as in Fitz. Natur.Bre.fol.5. tenure in capite is a tenure of the crowne, and is a Seigniorie in grosse, that is, of the person of the king: and so is 30. Hen. 8. Dyer fol.44. 45. a tenure in chiefe as of the crowne is meerely a tenure of the person of the king, and therewith agreeth 28. Henr. 8. tit Tenure, Br. 65. The Statute of 4. Hen.5. cap. vltimo gaue Priors aliens, which were conuentuall to the king and his heires; by which gift saith 34. Hen 6. 34. the same were annexed to the crowne. And in the said Act of 25. E.3. whereas it is said in the beginning, within the ligeance of England, it is twice afterward said in the same Act within the ligeance of the king, and yet all one ligeance due to the king. So in 42. Edw.3.fol.2. where it is first said, the ligeance of England, it is afterward in the same case called, the ligeance of the king; wherein though they vsed seuerall manner and phrases of speech, yet they intended one and the same ligeance. So in our vsuall Commission of Assise, of Gaole deliuerie, of Oyer and Terminer, of the Peace &c. power is giuen to execute iustice secundum legem & consuetudinem regni nostri Angliæ: and yet Little. lib.2. in his chapter of Villenage, fol.43. in disabling of a man that is attainted in a Premunire, saith, That the same is the kings Law; and so doth the Register in the writ of ad iura regia style the same.

The reasons and causes wherefore by the policie of the Law the king is a body politique, are three, viz. 1. causa maiestatis, 2. causa necessitatis, and 3. causa vtilitatis. First, causa maiestatis, the king cannot giue or take but by matter of Record for the dignitie of his person. Secondly, causa necessitatis, as to auoyd the attainder of him that hath right to the Crowne, as it appeareth in 1.Hen.7.4. least in the interim there should be an Interregnum, which the Law will not suffer. Also by force of this politique capacitie, though the king be within age, yet may hee make Leases and other Graunts, and the same shall bind him; otherwise his reuenue should decay, and the king should not bee able to reward seruice &c. Lastly, causa vtilitatis, as when landes and possessions discend from his collaterall auncestors, beeing Subiects, as from the Earle of

The reasons wherefore the King by iudgement of law hath a politique capacitie.

of March ꝛc. to the king, now is the king ſeiſed of the ſame in iure coronæ in his politique capacitie, for which cauſe the ſame ſhall goe with the crowne: and therefore, albeit Queene Elizabeth was of the halfe blood to Queene Marie, yet ſhe in her body politique enioyed all thoſe fee ſimple lands, as by the Law ſhee ought, and no collaterall couſin of the whole blood to Queene Marie ought to haue the ſame. And theſe are the cauſes wherefore by the policie of the law the king is made a body politique: So as for theſe ſpecial purpoſes the law makes him a body politique, immortall, and inuiſible, whereunto our ligeance cannot appertaine. But to conclude this point, our ligeance is due to our naturall liege Soueraigne, diſcended of the blood royall of the kings of this Realme. And thus much of the firſt generall part de Ligeantia.

The 2. generall part. *De Legibus*

Now followeth the ſecond part, de Legibus, wherein theſe parts were conſidered: First, That the ligeance or faith of the Subiect is due vnto the king by the law of Nature: Secondly, That the Law of Nature is part of the Law of England: Thirdly, That the Law of Nature was before any iudiciall or municipall Law: Fourthly, That the Law of Nature is immutable.

The Law of Nature.

The Law of Nature is that which God at the time of creation of the nature of man infuſed into his heart, for his preſeruation and direction; and this is Lex æterna, the morall Law, called alſo the Law of Nature: and by this Law, written with the finger of God in the heart of man, were the people of God a long time gouerned, before that Law was written by Moyſes, who was the firſt Reporter or Writer of the Law in the world. The Apoſtle in the ſecond chapter to the Romans ſaith, Cum enim gentes quæ legem non habẽt naturaliter ea quæ legis ſunt faciunt. And this is within that commandement of the morall law, honora patrem; which doubtleſſe doth extend to him that is pater patriæ. And the Apoſtle ſaith, Omnis anima poteſtatibus ſublimioribus ſubdita ſit. And theſe be the words of the great Diuine, Hoc Deus in ſacris Scripturis iubet, hoc lex naturæ dictat, vt quilibet ſubditus obediat ſuperiori. And Ariſtole, Natures Secretarie, Lib. 5. Æthicorum ſaith, That ius naturale eſt, quod apud omnes homines eandem habet potentiam. And herewith doe agree Bracton lib. 1. cap. 5. and Forteſcue, cap. 8. 12. 13. & 16. Doctor & Student, cap. 2. & 4. And the reaſon hereof is, for that God and Nature is one

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to all, and therefore the law of God and Nature is one to all. By this law of nature is the faith, ligeance, and obedience of the subiect due to his soueraigne or superior. And Aristotle 1. Politicorum proueth, that to commaund and to obey is of nature, and that magistracie is of nature: for whatsoeuer is necessarie, and profitable for the preseruation of the societie of man, is due by the law of nature: but magistracie and gouernement are necessarie and profitable for the preseruation of the societie of man; therefore magistracie and gouernement, are of nature. And herewith accordeth Tully lib. 3. de Legibus, Sine imperio nec domus vlla, nec ciuitas, nec gens, nec hominum vniuersum genus stare, nec ipse denique mundus potest. This law of nature, which indeed is the eternall law of the Creator, infused into the heart of the creature at the time of his creation, was 2000. yeres before any law written, and before any iudiciall or municipall lawes. And certaine it is, that before iudiciall or municipall lawes were made, kings did decide causes according to naturall equitie, and were not tyed to any rule or formalitie of law, but did dare iura. And this appeareth by Fortescue cap. 12. & 13. and by Virgil that Philosophicall Poet 7. Ænead:

Hoc Priami gestamen erat, cum iura vocatis
More daret populis.

And 5. Ænead:

——Gaudet regno Troianus Aceste,
Indicitq; forum & patribus dat iura vocatis.

And Pomponius lib. 2. cap. de origine iuris, affirmeth, that in Tarquinius Superbus time, there was no Ciuile law written, and that Papirius reduced certaine obseruations into writing, which was called Ius ciuile Papirianum. Now the reason wherefore lawes were made and published, appeareth in Fortescue cap. 13. and in Tully lib. 2. officiorum: at cum ius æquabile ab vno viro homines non consequerentur, inuentę sunt leges. Now it appeareth by demonstratiue reason, that ligeance, faith, and obedience of the subiect to the Soueraigne, was before any municipall or iudiciall lawes: 1. For that gouernement and subiection were long before any municipall or iudiciall lawes: 2. For that it had bin in vaine to haue prescribed lawes to any, but to such as ought obedience, faith, and ligeance before, in respect whereof they were bound to obey and obserue them: Frustra enim

feruntur leges niſi ſubditis & obedientibus. Seeing then that faith, obedience, and ligeance, are due by the law of nature, it followeth that the ſame cannot be changed or taken away: for albeit iudiciall or municipall lawes haue inflicted and impoſed in ſeuerall places, or at ſeuerall times, diuers and ſeueral puniſhments and penalties for breach or not obſeruance of the law of nature (for that law onely conſiſted in commaunding or prohibiting without any certaine puniſhment or penaltie) yet the verie law of nature it ſelfe, neuer was nor could bee altered or changed. And therefore it is certainely true, that Iura naturalia ſunt immutabilia. And herewith agreeth Bracton lib. 1. cap. 5. and Doctour and Student cap. 5. & 6. And this appeareth plainly and plentifully in our Books.

If a man hath a ward by reaſon of a Seigniorie, and is outlawed, he forfeiteth the Wardſhip to the king: but if a man hath the wardſhip of his owne ſonne or daughter, which is his heire apparant, and is outlawed, he doth not forfeit this wardſhip; for nature hath annexed it to the perſon of the father, as it appeareth in 33. H. 6. 55. & bonus rex nihil a bono patre differt, & patria dicitur a patre, quia habet communem patrem, qui eſt pater patriæ. In the ſame manner, maris & fœminę coniunctio eſt de iure naturæ, as Bracton in the ſame booke and chapter, and S. Germin in his booke of the Doctor and Student, cap. 5. doe hold. Now if hee that is attainted of Treaſon or Felonie, bee ſlaine by one that hath no authoritie, or executed by him that hath authoritie, but purſueth not his warrant, in this caſe his eldeſt ſonne can haue no appeale, for he muſt bring his appeale as heire, which beeing ex prouiſione hominis, he loſeth it by the attainder of his father: but his wife (if any he haue) ſhall haue an appeale, becauſe ſhee is to haue her appeale as wife, which ſhe remaineth notwithſtanding the attainder, becauſe maris & fœminæ coniunctio is de iure naturę, and therfore (it being to be intended of true and right matrimonie) is indiſſoluble: and this is proued by the booke in 35. H. 6. fol. 57. So if there be mother & daughter, & the daughter is attainted of felony, now cannot ſhe be heire to her mother, for the cauſe aforeſaid, yet after her attainder if ſhe killeth her mother, this is parricide and petit treaſon; for yet ſhe remaineth her daughter, for that is of nature: and herewith agreeth 21. E. 3. 17. b. If a man be attainted of Felonie or Treaſon, he hath loſt the kings legall protection, for he is thereby vtterly diſabled to ſue any action reall or perſonall (which is a greater diſabilitie than an alien in league hath) and yet ſuch a perſon ſo attainted hath not loſt that

protecti-

protection which by the law of nature is giuen to the king, for that is indelebilis & immutabilis; and therefore the king may protect and pardon him, and if any man kill him without warrant, he shall bee punished by law as a manslayer; and thereunto accordeth 4.E.4. and 35.H.6.57. 2.Ass.pl.3. By the statute of 25. Ed.3.cap.22. a man attainted in a Præmunire, is by expresse words out of the kings protection generally: and yet this extendeth only to legall protection, as it appeareth by Litl.fol.43. for the Parliament could not take away that protection which the law of nature giueth vnto him: and therfore notwithstanding that statute, the king may protect and pardon him. And though by that statute it was further enacted, That it should be done with him as with an enemie, by which words any man might haue slaine such a person (as it is holden in 24.H.8.tit Coron Br.197.) vntil the statute made añ 5.El.ca.1. yet the king might protect and pardon him. A man outlawed is out of the benefit of the municipal law: for so saith F.N.B. 161. Vtlagatus est quasi extra legem positus: and Bracton lib.3.tract.2.cap.11. saith, that caput gerit lupinum; yet is he not out either of his naturall ligeance, or of the kings naturall protection, for neither of them is tyed to municipall lawes, but is due by the law of nature, which (as it hath bin said) was long before any iudiciall or municipall lawes. And therefore if a man were outlawed for felonie, yet was he within the kings naturall protection, for no man but the Sherife could execute him, as it is adiudged in 2.lib.Ass.pl.3. Euerie subiect is by his naturall ligeance bound to obey and serue his Soueraigne &c. It is enacted by the Parliament of 23.H.6. that no man should serue the king as Sherife of any Countie aboue one yeare, and that, notwithstanding any clause of non obstante to the cõtrarie, that is to say, notwithstanding that the king should expresly dispense with the said statute: howbeit it is agreed in 2.H.7. that against the expresse purview of that act, the king may by a speciall non obstante dispence with that act; for that the act could not bar the king of the seruice of his subiect, which the law of nature did giue vnto him. By these and many other cases that might bee cited out of our bookes, it appeareth, how plentifull the authorities of our lawes be in this matter. Wherefore to conclude this point (and to exclude all that hath beene or could bee obiected against it) if the obedience and ligeance of the subiect to his Soueraigne, bee due by the law of nature, if that law bee parcell of the lawes as well of England, as of all other nations, and is immutable, and that Postnati and wee of England are vnited by birthright

in obedience and ligeance (which is the true cauſe of naturall ſubiection) by the law of nature. It followeth that Caluin the plaintife beeing borne vnder one ligeance to one king, cannot be an alien borne, And there is great reaſon, that the law of nature ſhould direct this caſe, wherein fiue naturall operations are remarkable: Firſt, the king hath the crowne of England by birthright, beeing naturally procreated of the blood royall of this realme: Secondly, Caluin the plaintife naturalized by procreation and birthright, ſince the diſcent of the crowne of England: Thirdly, ligeance and obedience of the ſubiect to the Soueraigne, due by the law of nature: Fourthly, protection and gouernment due by the law of nature: Fifthly, this caſe in the opinions of diuers was more doubtfull in the beginning, but the further it proceeded, the cleerer and ſtronger it grew; and therefore the doubt grew from ſome violent paſſion, and not from any reaſon grounded vpon the law of nature, quia quanto magis violentus motus (qui fit contra naturam) appropinquat ad ſuum finem, tanto debiliores & tardiores ſunt eius motus; ſed naturalis motus, quanto magis appropinquat ad ſuum finem, tanto fortiores & velociores ſunt eius motus. Hereby it appeareth how weake the obiection grounded vpon the rule of Quando duo iura concurrunt in vna perſona &c. is: For that rule holdeth not in perſonall things, that is, when two perſons are neceſſarily & ineuitably required by law (as in the caſe of an alien borne there is:) and therfore no man will ſay, that now the king of England can make warre or league with the king of Scotland, & ſic de cæteris: And ſo in caſe of an alien borne, you muſt of neceſſitie haue two ſeuerall ligeances to two ſeuerall perſons. And to conclude this point concerning lawes, Non aduerſatur diuerſitas regnorum ſed regnantium, non patriarum ſed patrum patriarum, non coronarum ſed coronatorum, non legum municipalium ſed regum maieſtatum. And therefore thus were directly and cleerely anſwered as well the obiections drawne from the ſeueraltie of the kingdomes, ſeeing there is but one head of both, & the Poſtnati and by ioyned in ligeance to that one head, which is copula & tanquã oculus of this caſe; as alſo the diſtinction of the lawes, ſeeing that ligeance of the ſubiects of both kingdomes, is due to their Soueraigne by one law, and that is the law of nature.

The 3. generall part, cõcerning both kingdomes.

For the third, It is firſt to bee vnderſtood, that as the law hath wrought foure vnions, ſo the law doth ſtill make foure ſeperations. The firſt vnion is of both kingdomes vnder one naturall liege ſoueraigne king, and ſo acknowledged by the act of Parlia-

Parliament of recognition. The second is an vnion of ligeance and obedience of the subiects of both kingdomes, due by the law of nature to their Soueraigne: And this vnion doth suffice to rule and ouerrule the case in question; and this in substance is but a vniting of the hearts of the subiects of both kingdoms one to another, vnder one head and soueraigne. The 3. vnion is an vnion of protection of both kingdomes, equally belonging to the subiects of either of them: And therefore the two first arguments or obiections drawne from two supposed seuerall ligeances, were fallacious, for they did disiungere coniungenda. The fourth vnion and coniunction is, of the three Lyons of England and that one of Scotland, vnited & quartered in one escucheon.

Concerning the seperations yet remaining: First, England and Scotland remaine seuerall and distinct kingdomes: 2. They are gouerned by seuerall iudiciall or municipall lawes: 3. They haue seuerall distinct and seperat Parliaments: 4. Each kingdome hath seuerall Nobilities: For albeit a Postnatus in Scotland, or any of his posteritie, be the heire of a Noble man of Scotland, and by his birth is legitimated in England, yet he is none of the Peeres or Nobilitie of England; for his naturall ligeance and obedience, due by the law of nature, maketh him a subiect, and no alien within England: but that subiection maketh him not noble within England, for that Nobilitie had his originall by the kings creation, and not of nature. And this is manifested by expresse authorities, grounded vpon excellent reasons in our bookes. If a Baron, Vicount, Earle, Marques, or Duke of England, bring any action reall or personall, and the defendant pleadeth in abatement of the writ, that hee is no Baron, Vicont, Earle, &c. and therupon the demandant or plaintife taketh issue; this issue shall not bee tried by Iurie, but by the record of Parliament, whether he or his auncestor, whose heire hee is, were called to serue there as a Peere, and one of the Nobilitie of the Realme. And so are our books adiudged in 22. Ass. 24. 48. E. 3. 30. 35. H. 6 40. 20. Eliz. Dyer 360. Vide in the 6. part of my Reports, in the Counteſſe of Rutlands case. So as the man, that is not de iure a Peere, or one of the Nobilitie, to serue in the vpper house of the Parliament of England, is not in the legall proceedinges of law accounted Noble within England. And therefore if a Countee of Fraunce, or Spaine, or any other forreine kingdome, should come into England, hee should not here sue, or be sued, by the name of Countee, &c. for that hee is none of the Nobles, that are members of the

vpper houſe of the Parliament of England: and herewith agree the booke caſes of 20. Ed. 4. 6. and 11. Ed. 3. tit Brē 473. Like law it is, and for the ſame reaſon, of an Earle or Baron of Ireland; he is not any Peere, or of the nobilitie of this Realme: and herewith agreeth the booke in 8. R. 2. tit Proces pl. vltim. where in an action of Debt proces of Outlawrie was awarded againſt the Earle of Ormond in Ireland, which ought not to haue been, if he had beene noble here. Vide Dier 20. El. 360.

But yet there is a diuerſitie in our bookes worthy of obſeruation, for the higheſt and loweſt dignities are vniuerſall; for if a king of a forreine nation come into England, by the leaue of the king of this Realme (as it ought to bee) in this caſe hee ſhall ſue and bee ſued by the name of a king: and herewith agreeth 11. E. 3. tit Briefe 473. where the caſe was, that Alice, which was the wife of R. de O. brought a writ of Dower againſt John Earle of Richmond, and the writ was, Præcip Iohanñ Comiti Richmōd cuſtodi terræ & hæredis of William the ſonne of R. de O. the tenāt pleaded, That he is Duke of Brittain, not named Duke, iudgment of the writ: But it is ruled, that the writ was good, for that the dukedome of Brittaine was not within the Realme of England. But there it is ſaid, that if a man bring a writ againſt Edward Baliol, and name him not king of Scotland, the writ ſhall abate for the cauſe aforeſaid. And hereof there is a notable preſident in Fleta lib. 2. cap. 14. where, treating of the iuriſdiction of the Kings Court of Marſhalſey, it is ſaid, Et hæc omnia ex officio ſuo licitè facere poterit (s. Seneſchallus aulæ hoſpicij Regis) non obſtante alicuius libertate, etiam in alieno regno dum tamen reus in hoſpitio Regis poterit inueniri, ſecundum quod contigit Pariſ. anno 14. Ed. 1. de Engelramo de Nogent capto in hoſpitio Regis Angliæ (ipſo rege tunc apud Pariſiam exiſtente) cum diſcis argenti furatis recentèr ſuper facto rege Franciæ tunc præſente, & vnde licet curia regis Francię de prædicto latrone per caſtellanum Pariſ. petita fuerit, habitis hic & inde tractatibus, in conſilio Regis Franciæ tandem conſideratum fuit, qd Rex Anglię illa regia prærogatiua & hoſpitij ſui priuilegio vteretur & gauderet, qui coram Roberto Fitz-Iohn milite tunc hoſpitij Regis Anglię Seneſchallo de latrocinio conuictus per conſiderationem eius Curię fuit ſuſpenſus in patibulo Scī Germani de praris. which proueth, that though the king be in a forreine kingdome, yet hee is iudged in law a king there. The other part of the ſaid diuerſitie, is proued by the booke caſe in 20. Ed. 4. fol. 6. where, in a writ of Debt brought by Sir John Duglas knight, againſt Elizab. Molford, the defendant demaunded iudgement of the writ, for that

the

the plaintife was an Earle of Scotland, but not of England, and that our Soueraigne Lord the king had graunted vnto him safe conduct, not named by his name of dignitie, iudgement of the writ &c. And there Iustice Littleton giueth the rule: the plaintife (saith he) is an Earle in Scotland, but not in England; and if our Soueraigne Lord the king graunt to a Duke of Fraunce a safe conduct to marchandise, and to enter into his Realme, if the Duke commeth and bringeth marchandise into this land, and is to sue an action here, he ought not to name himselfe Duke, for he is not a Duke in this land, but only in France. And these bee the verie words of that booke case, out of which I collect three things. First, that the plaintife was named by the name of a knight, whersoeuer he receiued that degree of dignitie, Vide 7.H.6.14. accord. 2. That an Earle of another kingdom or nation is no Earl (to bee so named in legal proceedings) within this Realme: and herewith agreeth the booke of 11.Ed.3. the Earle of Richmonds case before recited. 3. That albeit the king by his letters Patents of safe conduct doe name him Duke, yet that appellation maketh him no Duke, to sue or be sued by that name within England: So as the law in these points (apparant in our bookes) being obserued, and rightly vnderstood, it appeareth how causelesse their feare was, that the adiudging of the plaintife to be no alien, should make a confusion of the nobilities of either kingdome.

Now are we in order come to the fourth noune (which is the generall part) Alienigena; wherein 6. things did fall into consideration. ¶1. who was Alienigena, an alien borne by the lawes of England. ¶2. How many kind of aliens borne there were. ¶3. What incidents belonged to an alien borne. ¶4. The reason why an alien is not capable of inheritance or freehold within England. ¶5. Examples, resolutions, and iudgements, reported in our bookes in all succession of ages, proouing the plaintife to be no alien. ¶6. Demonstratiue conclusions vpon the premisses, approuing the same. The 4. generall part. *De Alienigena.*

1 An Alien is a subiect that is borne out of the ligeance of the king, and vnder the ligeance of another, and can haue no real or personall action for or concerning land; but in euery such action the tenant or defendant may plead, that he was borne in such a countrey, which is not within the ligeance of the king, and demaund iudgement if he shall be answered. And this is in effect the description which Littleton himselfe maketh, lib. cap. 2. Villeñ fol. 43. Alienigena est alienę gentis seu alienæ ligeantię, qui etiam dicitur Who is an Alien.

tur peregrinus, alienus, exoticus, extraneus &c. Extraneus eſt ſubditus, qui extra terram, i. poteſtatem regis natus eſt. And the vſuall and right pleading of an alien borne, doth liuely and truely deſcribe and expreſſe what he is. And therein two things are to bee obſerued: 1. That the moſt vſuall and beſt pleading in this caſe is, both excluſiue and incluſiue, viz. extra ligeantiam domini Regis &c. & infra ligeantiam alterius Regis, as it appeareth in 9. Ed. 4. 7. Booke of Entries fol. 244. &c. which cannot poſſibly bee pleaded in this caſe, for two cauſes: First, for that one king is Soueraigne of both kingdomes: 2. One ligeance is due by both to one Soueraigne, and in caſe of an alien, there muſt of neceſſitie bee ſeuerall kings, and ſeuerall ligeances. Secondly, no pleading was euer extra regnum, or extra legem, which are circumſcribed to place, but extra ligeantiam, which (as it hath beene ſaid) is not locall or tyed to any place.

It appeareth by Bracton lib. 3. tract. 2. cap. 15. fol. 134. that Canutus the Daniſh king, hauing ſetled himſelfe in this kingdom in peace, kept notwithſtanding (for the better continuance thereof) great armies within this Realme. The Peeres and Nobles of England diſtaſting this gouernement, by armes and armies (Odimus accipitrem quia ſemper viuit in armis) wiſely and politikely perſuaded the king, that they would prouide for the ſafetie of him and his people, and yet his armies carrying with them many inconueniences, ſhould bee withdrawne: And therefore offered, that they would conſent to a law, that whoſoeuer ſhould kill an alien, and bee apprehended, and could not acquit himſelf, hee ſhould bee ſubiect to iuſtice: but if the manſlayer fled, and could not bee taken, then the towne where the man was ſlaine ſhould forfeit 66. markes vnto the king: and if the town were not able to pay it, then the Hundred ſhould forfeit and pay the ſame vnto the kings treaſure: whereunto the king aſſented. This law was penned: quicunque occiderit Francigenam &c. not excluding other aliens, but putting Francigena a Frenchman for an example, that others muſt be like vnto him, in owing ſeuerall ligeance to a ſeuerall Soueraigne, that is, to be extra ligeantiam Regis Angliæ, and infra ligeantiam alterius Regis. And it appeareth before out of Bracton and Fleta, that both of them vſe the ſame examples (in deſcribing of an alien) ad fidem Regis Franciæ. And it was holden, that except it could bee prooued, that the partie ſlaine was an Engliſh man, that hee ſhould bee taken for an alien; and this was called Engleſherie, Engleſheria, that is, a proofe that the partie ſlaine was an Engliſh man. (Hereupon

Canutus

Canutus preſently withdrew his armies, & within a while after loſt his crowne, and the ſame was reſtored to his right owner.) The ſaid law of Engleſherie continued vntill 14.Ed.3.cap.4. and then the ſame was by act of Parliament ouſted and aboliſhed. So amongſt the lawes of William the firſt, publiſhed by Maſter Lambert fol.125. Omnis Francigena (there put for example, as before is ſaid, to expreſſe what manner of perſon alienigena ſhould be) qui tempore Edwardi propinqui noſtri fuit particeps legum & conſuetudinum Anglorum (that is made denizen) quod dicunt ad ſcot & lot perſoluat ſecundum legem Anglorum.

How many kind of aliens there be.

Euerie man is either Alienigena, an alien borne, or ſubditus, a ſubiect borne. Euery alien is either a friend that is in league, &c. or an enemie that is in open warre, &c. Euerie alien enemie is either pro tempore, temporarie for a time, or perpetuus, perpetuall, or ſpecialiter permiſſus, permitted eſpecially. Euerie ſubiect is either natus, borne, or datus, giuen or made: And of theſe briefely in their order. An alien friend, as at this time a German, a Frenchman, a Spaniard, &c. (all the kings and princes in Chriſtendome being now in league with our Soueraigne, but a Scot being a ſubiect cannot be ſaid to be a friend, nor Scotland to bee ſolum amici) may by the commō law haue, acquire, and get within this Realme, by gift, trade, or other lawfull meanes, any treaſure or goods perſonall whatſoeuer, as well as any Engliſhman, and may maintaine any action for the ſame: But lands within this Realme, or houſes (but for their neceſſary habitation only) alien friends cannot acquire or get, nor maintaine any action reall or perſonall for any land or houſe, vnleſſe the houſe be for their neceſſarie habitation. For if they ſhould bee diſabled to acquire and maintaine theſe things, it were in effect to denie vnto them trade and traffique, which is the life of euerie iſland. But if this alien become an enemie (as all alien friends may) then is hee vtterly diſabled to maintaine any action, or get any thing within this Realme. And this is to bee vnderſtood of a temporarie alien, that beeing an enemie, may bee friend, or beeing a friend may bee an enemie. But a perpetuall enemie (though there bee no warres by fire and ſword betweene them) cannot maintaine any action, or get any thing within this Realme. All Infidels are in law perpetui inimici, perpetuall enemies (for the law preſumes not that they will bee conuerted, that beeing remota potentia, a remote poſſibilitie) for betweene them, as with the diuels, whoſe ſubiects they bee, and the Chriſtian, there is perpetuall hoſti-

hostilitie and can be no peace: for as the Apostle sayth 2. Cor. 15. quæ autem conuentio Christi ad Belial, aut quæ pars fideli cum infideli; and the law saith, Iudæo Christianum nullum seruiat mancipium, nefas enim est quem Christus redemit blasphemum Christi in seruitutis vinculis detineri. Register 282. Infideles sunt Christi & Christianorum inimici. And herewith agreeth the booke in 12. H. 8. fol. 4. where it is holden, that a Pagan cannot haue or maintaine any action at all.

By what lawes kingdoms gotten by conquest &c. shalbe gouerned.

And vpon this ground there is a diuersitie betweene a conquest of a kingdom of a Christian king, and the conquest of a kingdome of an Infidel: for if a king come to a Christian kingdome by conquest, seeing that he hath vitæ & necis potestatem, hee may at his pleasure alter and change the lawes of that kingdome; but vntill he doth make an alteration of those lawes, the antient lawes of that kingdome remaine. But if a Christian king should conquer a kingdome of an Infidel, and bring them vnder his subiection, there ipso facto the lawes of the Infidell are abrogated; for that they be not onely against Christianitie, but against the law of God and of nature, contained in the Decalogue. And in that case, vntill certaine lawes bee established amongst them, the king by himselfe and such Iudges as he shall appoint, shall iudge them and their causes, according to natural equitie, in such sort as kings in antient time did within their kingdomes, before any certaine municipall lawes were giuen, as before hath beene said. But if a king hath a kingdome by title of discent, there seeing by the lawes of that kingdome hee doth inherit the kingdome, he cannot change those laws of himselfe, without consent of Parliament. Also if a king hath a Christian kingdome by conquest, as king Henrie the second had Ireland, after king John had giuen vnto them, beeing vnder his obedience and subiection, the lawes of England, for the gouernement of that countrey, no succeeding king could alter the same, without Parliament. And in that case whiles the Realme of

Ireland.

England, and that of Ireland, were gouerned by seuerall lawes, any that was born in Ireland, was no alien to the realm of England. In which president of Ireland 3. things are to be obserued: 1. That then there had bin two discents, one from H. the 2. to king Rich. the 1. and from Rich. to king John, before the alteration of the lawes: 2. That albeit Ireland was a distinct Dominion, yet the title thereof beeing by conquest, the same by iudgement of law might by expresse words be bound by the parliaments of England: 3. That albeit no reser-

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uation were in king Johns charter, yet by iudgement of law a writ of Error did lye in the K. bench in England, of an erronous iudgement in the kings bench of Ireland. Furthermore, in the case of the conquest of a Christian kingdome, as well those that serued in wars at the conquest, as those that remained at home for the safetie and peace of their countrey, & other the kings subiects, as well Antenati as Postnati are capable of lands in the kingdome or countrey conquered, and may maintaine any reall action, and haue the like priuiledges and benefits there, as they may haue in England.

The 3. kind of enemie is, inimicus permissus, an enemie that commeth into the realme by the kings safe conduct, of which you may read in the Register fo. 25. Booke of Entries Iectione firmę 7. 32. H. 6. 23. &c. Now what a subiect borne is, appeareth at large by that which hath bin said de ligeantia; & so likewise de subdito dato of a donaison, for that is the right name, so called, because his legitimation is giuen vnto him: for if you deriue denizen from deins nee, one born within the obedience or ligeance of the king, thē such a one should be all one with a naturall borne subiect: and it appeareth before out of the laws of king Ed. the 1. of what antiquitie the making of denizens by the K. of England hath beene.

3 There be regularly (vnlesse it be in special cases) 3. incidents to a subiect borne: 1. That the parents be vnder the actual obedience of the king: 2. That the place of his birth bee within the kings dominion: And 3. the time of his birth is chiefly to be considered; for he cannot be a subiect born of one kingdom, that was borne vnder the ligeance of a king of another kingdome, albeit afterwards one kingdome discend to the king of the other. For the first, it is termed actuall obedience, because though the king of England hath absolute right to other kingdoms or dominiōs as France, Acquitaine, Normandy, &c. yet seeing the king is not in actuall possession thereof, none borne there since the crowne of England was out of actuall possession therof, are subiects to the K. of England. 2. The place is obseruable, but so, as many times ligeance or obedience, without any place within the K. dominiōs may make a subiect born; but any place within the K. dominions without obediēce, can neuer produce a natural subiect. And therfore if any of the K. embassadors in forein nations, haue children there of their wiues, being English women, by the cōmon laws of England they are natural born subiects, & yet they are borne out of the kings dominions. But if enemies should come into any of the kinges dominions, and surprise any castle or fort, and possesse

Of the incidents to an alien.

posselle the same by hostilitie, and haue issue there, that issue is no subiect to the king, though hee bee borne within his dominions, for that he was not borne vnder the kings ligeance or obedience. But the time of his birth is of the essence of a subiect borne: for hee cannot be a subiect to the king of England, vnlesse at the time of his birth he was vnder the ligeance and obedience of the king. And that is the reason that Antenati in Scotland (for that at the time of their birth they were vnder the ligeance and obedience of another king) are aliens borne, in respect of the time of their birth.

Wherefore an alien borne is not capable of lands.

4 It followeth next in course, to set downe the reasons, wherfore an alien borne is not capable of inheritance within England; and that he is not for three reasons: 1. The secrets of the Realme might thereby bee discouered: 2. The reuenues of the Realme (the sinewes of warre, and ornament of peace) should bee taken and enioyed by strangers borne: 3. It should tend to the destruction of the Realme. Which three reasons, doe appeare in the statutes of 2. H. 5. cap. and 4. H. 5. cap. vltimo. But it may be demaunded, Wherein doth that destruction consist? Whereunto it is answered: First, it tends to destruction tempore belli; for then strangers might fortifie themselues in the heart of the Realme, and bee readie to set fire on the Commonwealth, as was excellently shadowed by the Troian horse in Virgils 2. Booke of the Eneads, where a verie few men in the heart of the citie, did more mischiefe in few houers, than x thousand men without the wals in ten yeares: Secondly tempore pacis, for so might many aliens borne get a great part of the inheritance and freehold of the Realme, whereof there should follow a failer of iustice (the supporter of the Commonwealth) for that aliens borne cannot bee returned of Juries for the triall of issues betweene the king and the subiect, or betweene subiect and subiect. And for this purpose and many other, see a Charter (worthy of obseruation) of K. E. 3. written to Pope Clement, Datum apud West. 26. die Sept. ann regni nostri Francię 4, regni vero Angliæ 17.

Ezamples and authorities in law.

5 Now are wee come to the examples, resolutions, and iudgments, of former times: wherein two things are to be obserued. First, how many cases in our bookes doe ouerrule this case in question (for vbi eadem ratio ibi idem ius, & de similibus idem est iudicium:) 2. That for want of an expresse text of law in terminis terminantibus, and of examples and presidents in like cases (as was obiected by some) wee are driuen to determine the question by naturall reason: for it was said, Si cesset lex scripta id custodiri

sim opor-

by naturall reason: for it was said, Si cesset lex scripta id custodiri oportet quod moribus & consuetudine inductum est, & si qua in re hoc defecerit, recurrendum est ad rationem. But that receiueth a threefold answere: First, that there is no such rule in the common or ciuile law; but the true rule of the ciuile Law is, Lex scripta si cesset, id custodiri oportet quod moribus & consuetudine inductum est, & si qua in re hoc defecerit, tunc id quod proximum & consequens ei est, & si id non appareat, tunc ius quo vrbs Roma vtitur, seruari oportet. Secondly, if the said imaginatiue rule be rightly and legally vnderstood, it may stand for truth: for if you intend ratio for the legall and profound reason of such as by diligent studie and long experience and obseruation are so learned in the Lawes of this Realme, as out of the reason of the same they can rule the case in question, in that sence the said rule is true: but if it bee intended of the reason of the wisest man that professeth not the Lawes of England, then (I say) the rule is absurd and dangerous: for cuilibet in sua arte perito est credendum, & quod quisque norit in hoc se exerceat. Et omnes prudentes illa admittere solent quæ probantur ijs qui in sua arte benè versati sunt. Arist. 1. Topicorum, cap. 6. Thirdly, there be multitudes of examples, presidents, iudgements, and resolutions in the Lawes of England, the true and vnstrayned reason whereof doth decide this question; for example: The Dukedome of Acquitaine, whereof Gascoyne was parcell, and the Earledome of Poytiers came to K. Henry the second by the mariage of Elianor daughter and heire of William Duke of Acquitaine, and Earle of Poytiers, which discended to Rich 1. H. 3. Ed. 1. E. 2. E. 3. &c. In 27. lib. Ass. pl. 48. in one case there appeare two iudgements and one resolution to be giuen by the Iudges of both Benches in this case following. The possessions of the Prior of Chelsey in time of warre were seised into the kings hands, for that the Prior was an alien borne: the Prior by petition of right sued to the king, and the effect of his petition was, That before he became Prior of Chelsey, he was Prior of Andouer, and whiles hee was Prior there, his possessions of that Priorie were likewise seised for the same cause, supposing that he was an alien borne; whereupon he sued a former petition, and alleadged, that he was borne in Gascoine within the ligeance of the king: which point beeing put in issue, and found by Iurie to be true, it was adiudged, that he should haue restitution of his possessions generally, without mentioning of aduowsons. After which restitution, one of the

Gascoine. Vasconia. Gasconia.

said aduowsons became void, ỹ Prior presẽted, against whō the K. brought a Quare impedit, wherin the K. was barred, & all this was cõtained in the later petitiõ. And the booke saith, That the Earle of Arundell and Sir Guy de B. came into the Court of common pleas, and demaunded the opinion of the Iudges of that court concerning the said case, who resolued, that vpon the matter aforesaid the King had no right to seise. In which case, amongst many notable points, this one appeareth to be adiudged and resolued, that a man borne in Gascoin vnder the Kings ligeance, was no alien borne, as to lands and possessions within the Realme of England; and yet England and Gascoine were seuerall and distinct countries, 2. inherited by seuerall & distinct titles, 3. gouerned by seuerall and distinct municipall lawes, as it appeareth amongst the Records in the Tower, Rott. vast. 10. E.1. Num.7. 4. out of the extent of the great Seale of England, and the iurisdiction of the Chauncerie of England; 5. the like obiection might be made for default of triall, as hath been made against the plaintife. And where it was said that Gascoin was no kingdome, and therefore it was not to be matched to the case in hand, it was answered, that this difference was without a diuersitie, as to the case in question: for if the plea in the case at the barre be good, then without question the Prior had bin an alien: for it might haue bin said (as it is in the case at the bar) that hee was borne extra ligeantiã regis regni sui Angliæ, & infra ligeantiã dñij sui Vasconiæ, and that they were seuerall dominions, & gouerned by seuerall lawes: but then such a conceit was not hatched, that a K. hauing seuerall dominions, should haue seuerall ligeances of his subiects. Secondly, it was answered, that Gascoine was sometime a kingdome, as likewise Millain, Burgundy, Bauier, Brittaine, & others were, & now are become dukedomes. Castile, Arragon, Portugal, Barcelona, &c. were sometime Earldomes, afterwards Dukedomes, & now kingdomes. Bohemia & Polonia were sometime Dukedomes, & now kingdomes, & (omitting many other, & comming nearer home) Ireland was before 32.H.8 a Lordship, & now is a kingdom, and yet the K. of England was as absolute a Prince and Soueraigne when hee was Lord of Ireland, as now, when he is styled King of the same. 10. E.3. 41. an exchange was made betweene a Englishman and a Gascoine, of lands in England and in Gascoine; ergo the Gascoyne was no alien, for then had hee not beene capable of landes in England. 1 H.4.1. the King brought a Writ of right of ward against one Sybill, whose husband was exiled into Gascoine;

Vasconia appellata fuit tempore Caroli magni regnum de Vasconia

ergo

ergo Gascoine is no parcell or member of England, for exilium est patriæ priuatio, natalis soli mutatio, legum natiuarum amissio. 4. E.4.10. the king directed his writ out of the Chauncerie vnder the great Seale of England, to the Maior of Burdeaux (a Citie in Gascoine) then being vnder the kings obedience, to certifie, whether one that was outlawed here in England, was at that time in the kings seruice vnder him in obsequio Regis: whereby it appeareth, that the kings writ did run into Gascoine, for it is the triall that the common Law hath appointed in that case. But as to other cases it is to be vnderstood, that there be two kind of writs, viz. breuia mandatoria & remedialia, & breuia mandatoria & non remedialia: breuia mandatoria & remedialia, as writs of Right, of Formedon, &c. of Debt, Trespasse, &c. and shortly, all writs reall and personall, whereby the party wronged is to recouer somewhat, and to be remedied for that wrong that was offered vnto him, are returnable or determinable in some Court of Justice within England, and to bee serued and executed by the Sherifes, or other ministers of Justice within England; and these cannot by any meanes extend into any other kingdome, Countrey, or Nation, though that it be vnder the kings actuall ligeance and obedience. But the other kind of writs that are mandatorie, and not remediall, are not tyed to any place, but do follow subiection and ligeance in what Countrey or Nation soeuer the Subiect is, as the kings writ to commaund any of his subiects residing in any forraine Countrey to returne into any of the kings own Dominions, Sub fide & ligeantia quibus nobis tenemini. And so are the aforesaid mandatorie writs cited out of the Register of Protection for safetie of body and goods, and requiring, that if any iniurie be offered, that the same bee redressed according to the Lawes and Customes of that place. Vide le Register, fol.26. Stamford prærog. cap. 12. fol. 39. sayth, That men borne in Gascoine are inheritable to lands in England. This doth also appeare by diuers acts of Parliament: for by the whole Parliament, 39.E.3.cap.16. it is agreed, that the Gascoines are of the ligeance and subiection of the king. Vide 42. Ed.3. cap.2. & 28. H.6. cap.5. &c.

Guyen was another part of Aquitaine, and came by the same title: and those of Guyen were by act of Parliament in 13.H.4. not inuinted, ex Rott. parliament eodē anno, adiudged & declared to be no aliens, but able to possesse and purchase &c. lands within this Realme. And so doth Stamford take the law, prog.c.12.f.39. Guyen. Guienna.

And thus much of the dukedome of Acquitaine, which (together with the Earledome of Poytiers) came to king Henry the second (as hath beene said) by mariage, and continued in the actuall possession of the kings of England by tenne discents, viz. from the first yeare of king Henry the second, vnto the two and thirtieth yeare of king Henry the sixt, which was vpon the very point of three hundred yeares, within which Duchy there were (as some write) 4. Archbish. 24. Bishop. 15. Earledomes, 202. Baronies, and aboue a thousand Captainesbips & Bailiwikes: and in all this long time, neither booke case nor record can bee found, wherein any plea was offered to disable any of them that were borne there, by forrain birth, but the contrary hereof directly appeareth by the said booke case of 27. lib. Ass. 48.

Normandy. Normannia. Normandia.

The kings of England had sometime Normandie vnder actuall ligeance and obedience. The question is then, whether men borne in Normandy, after one king had them both, were inheritable to lands in England; and it is euident by our bookes that they were: for so it appeareth by the declaratory act of 17. E. 2. de prerogatiua regis, cap. 12. that they were inheritable to and capable of lands in England: for the puruiew of that Statute is, Quod rex habebit escaetas de terris Normannorum &c. ergo Normanes might haue lands in England: & hoc similiter intelligendum est, si aliqua hæreditas discendat alicui nato in partibus transmarinis &c. whereby it appeareth, that they were capable of lands within England by discent. And that this act of 17. Ed. 2. was but a declaration of the common Law, it appeareth both by Bracton who (as it hath beene said) wrote in the raigne of Henry the third, lib. 3. tract. 2. c. 1. f. 116. and by Britton who wrote in 5. E. 1. c. 18. that all such lands as any Norman had either by discent or purchase, escheated to the K. for their treason, in reuolting from their naturall liege Lord and Soueraigne. And therefore Stamford prog. ca. 12. fo. 39. expounding the said statute of 17. E. 2. ca. 17. concludeth, that by that chapter it should appeare (as if he had said it is apparant without question) that all men born in Normandy, Gascoine, Guyan, Aniou, & Brittain (whiles they were vnder actual obedience) were inheritable within this realme as wel as Englishmen. And the reason thereof was, for that they were vnder one ligeance due to one Soueraigne. And so much (omitting many other authorities) for Normandy: sauing I cannot let passe the Iles of Iernsey & Gersey, parts & parcels of the dukedome of Normandy, yet remaining vnder the actuall ligeance and obedience of the king. I think no man will doubt, but those that are

Iernsey and Gersey.

borne

borne in Iernsey and Gersey (though those Iles are no parcell of the Realme of England, but seuerall dominions, enioyed by seuerall titles, gouerned by seuerall lawes) are inheritable and capable of any lands within the Realme of England. 1.E.3.fo. 7. Commission to determine the title of lands within the sayd Iles, according to the lawes of the Iles: and Mich.41.E.3.in the Treasurie, Quia negotium prædictum nec aliqua alia negotia de insula prædict' emergentia non debent terminari nisi secundum legem insulæ prædict' &c. And the Register, fol. 22. Rex fidelibus suis de Iernsey & Gersey. King William the first brought this dukedome of Normandy with him, which by fiue discents continued vnder the actuall obedience of the kings of England, and in or about the sixt yeare of king John, the Crowne of England lost the actuall possession thereof, vntil king Henry the fift recouered it againe, & left it to k. Henry the sixt, who lost it in the 28. yere of his raigne: wherein were (as some write) one Archbishopricke, & six Bishoprickes, and an hundred strong townes and fortresses, besides those that were wasted in warre. Maud the Empresse, the onely daughter and heire to Henry the first, tooke to her second husband Jeffrey Plantagenet, Earle of Aniou, Touraine, and Mayne, who had issue king H.2. to whō the said earledome by iust title discended, who, and the kings that succeeded him, styled themselues by the name of Comes Andegauiæ &c. vntill k. E.3. became king of all France: and such as were borne within that Earledome, so long as it was vnder the actual obedience of the k. of England, were no aliens, but naturall borne subiects, & neuer any offer made that we can find to disable them for forrein birth. But leaue we Normandy & Anfou, and speake we of the little, but yet ancient & absolute kingdom of the Isle of Manne, as it appeareth by diuers ancient & autentike records, as taking one for many. Artold k. of Manne sued to k. H.3. to come into England to conferre wth him, & to performe certeine things which were due to k. H.3. thereupon k. H.3. 28. Decemb. annō regni sui 34. at Winchester by his letters patents gaue licence to Artold k. of Manne as followeth: Rex oībus salutē. Sciatis, qd' licentiā dedimus &c. Artaldo regi de Manne veniendo ad nos in Angliā ad loquend' nobiscū, et ad faciendū nobis qd' facere debet; & ideo vobis mādamus qd' ei regi in veniendo ad nos in Angl', vel ibi morando, vel inde redeundo nullum faciatis aut fieri permittatis damnum, iniuriam, molestiam, aut grauamen, vel etiam hominibus suis quos secum ducet, & si aliquid eis forisfactum fuerit, id eis sine dilatione faciatis emendari. In cuius &c. duratur vsque ad festum sancti Michaelis. Wherein two things are

Manne.
Mannia.

to be obserued: 1. That seeing that Artold king of Manne sued for a licence in this case to the king, it proueth him an absolute king: for that a Monarch or an absolute prince cannot come into England without licence of the king, but any subiect being in league, may come into this Realme without licence. 2. That the king in his licence doth style him by the name of a king. It was resolued in 11. H.8. that where an office was found after the decease of Thomas Earle of Darby, and that he died seised &c. of the Isle of Manne, that the said office was vtterly void, for that the Isle of Manne, Normandie, Gascoine &c. were out of the power of the Chaunc-erie, and gouerned by seuerall lawes; and yet none will doubt, but those that are borne within that Isle, are capable and inheritable of lands within the Realme of England. Wales was sometimes a kingdome, as it appeareth by 19.H.6.fol.6. and by the act of Parliament of 2.H.5.cap.6. but whiles it was a kingdome, the same was holden, and within the fee of the king of England: and this appeareth by our bookes, Fleta lib.1. cap.16. 1.E.3.14. 8.E.3.59. 13.E.3. tit Iurisdict. 10.H.4.6. Plow.Com. 368. And in this respect, in diuers auncient Charters, kings of old time styled themselues in seuerall manners, as king Edgar, Britanniæ Βασιλεὺς, Etheldredus, totius Albionis dei prouidentia Imperator, Edredus magnæ Britanniæ monarcha, which among many other of like nature I haue seene. But by the Statute of 12. E.1. Wales was vnited and incorporated into England, and made parcell of England in possession, and therefore it is ruled in 7.H.4. fol.14. that no protection doth lye quia moratur in Wallia, because Wales is within the Realme of England. And where it is recited in the act of 27.H.8. that Wales was euer parcell of the Realme of England, it is true in this sence, viz. that before 12.E.1. it was parcell in tenure, and since it is parcell of the body of the Realme. And whosoeuer is borne within the fee of the king of England, though it bee in another kingdome, is a naturall borne subiect, and capable and inheritable of lands in England, as it appeareth in Plow.Com. 126. And therefore those that were borne in Wales before 12.E.1. whiles it was onely holden of England, were capable and inheritable of lands in England.

Wales. Cambria. Wallia.

Now come we to Fraunce and the members thereof, as Callice, Guynes, Tournay, &c. which discended to king Edward the third, as sonne and heire to Isabell, daughter and heire to Philip le Beau, king of Fraunce. Certaine it is, whiles king

France. Gallia. Francia.

king Henry the ſixt had both England and the heart and greateſt part of France vnder his actuall ligeance and obedience (for he was crowned king of France in Paris) that they that were then borne in thoſe parts of Fraunce, that were vnder actuall ligeance and obedience, were no aliens, but capable of and inheritable to lands in England. And that is proued by the writs in the Regiſter, fol. 26. cited before. But the inrolment of letters patents of denization in the Exchequer inter originalia, Anno 11. H. 6. with the Lord Treaſurers Remembrancer, was ſtrongly vrged and obiected: for (it was ſaid) thereby it appeareth, that king H. 6. in Anno 11. of his raigne did make denizen one Reynell, borne in Fraunce: Whereunto it was anſwered, that it is proued by the ſaid Letters patents, that he was borne in France before king Henry the ſixt had the actuall poſſeſſion of the Crowne of France, ſo as he was Antenatus: and this appeareth by the ſaid Letters patents, whereby the king graunteth, that Magiſter Iohannes Reynell ſeruiens noſter &c. infra regnum noſtrum Franciæ oriundus, pro termino vitæ ſuæ ſit ligeus noſter et eodem modo teneatur ſicut verus et fidelis noſter infra regnum Angliæ oriundus, ac quod ipſe terras infra regnum noſtrum Angliæ ſeu alia dominia noſtra perquirere poſſit et valeat. Now if that Reynel had bin borne ſince Henry the ſixt had the quiet poſſeſſion of France (the king being crowned king of Fraunce about one yeare before) of neceſſitie he muſt be an infant of very tender age, and then the K. would neuer haue called him his ſeruant, nor made the Patent (as thereby may be collected) for his ſeruice, nor called him by the name of Magiſter Iohannes Reynel: But without queſtion he was Antenatus borne, before the king had the actuall and reall poſſeſſion of that Crowne.

Callice is a part of the kingdome of Fraunce, and neuer was parcell of the kingdome of England, and the kings of England enioyed Callice in ꝛ from the raigne of king Edward the third, vntill the loſſe thereof in Q. Maries time, by the ſame title that they had to Fraunce. And it is euident by our bookes, that thoſe that were borne in Callice, were capable ꝛ inheritable to lands in England, 42. E. 3. cap. 10. Vide 21. H. 7. 33. 19. H. 6. 2. E. 4. 1. 39. H. 6. 39. 21. E. 4. 18. 28. H. 6. 3. b. By all which it is manifeſt, that Callice being parcell of Fraunce, was vnder the actuall obedience and commaundement of the king, and by conſequent thoſe that were borne there, were naturall borne ſubiects, and no aliens. Callice from the raigne of K. E. 3. vntill the 5. yeare of Qu. Mary, remained vnder the actual obediẽce of the K. of England.

Callice. Calecia. Caletum.

Guynes

Guines. Guines also, another part of Fraunce, was vnder the like obedience to king Henry the first, as appeareth by 32.H.6.fol.4. And Tournay. Tournay was vnder the obedience of Henry the eight, as it appeareth by 5.Eliz.Dyer,fo.224. for there it is resolued, that a bastard borne at Tournay, whiles it was vnder the obedience of Henry the eight, was a naturall subiect, as an issue borne within this Realme by aliens. If then those that were borne at Tournay, Callice, &c. whiles they were vnder the obedience of the king, were naturall subiects, and no aliens, it followeth, that when the kingdome of Fraunce (whereof those were parcels) was vnder the K. obedience, that those that were then borne there, were naturall subiects, and no aliens.

Ireland. Hibernia. Next followeth Ireland, which originally came to the kings of England by conquest, but who was the first conqueror thereof, hath beene a question. I haue seene a Charter made by king Edgar in these words: Ego Edgarus Anglorum Βασιλευς, omniumq; insularum oceani, quæ Britanniam circumiacent, Imperator et dominus, gratias ago ipsi Deo omnipotenti regi meo, qui meum imperium sic ampliauit & exaltauit super regnum patrum meorum &c. mihi concessit propitia diuinitas, cum Anglorum imperio omnia regna insularũ oceani, cum suis ferocissimus regibus vsque Noruegiam, maximamque partem Hiberniæ cum sua nobilissima ciuitate de Dublina Anglorum regno subiugare, quapropter & ego Christi gloriam & laudem in regno meo exaltare, & eius seruitium amplificare deuotus disposui &c. Yet for that it was wholly conquered in the raigne of Henry the second, the honour of the conquest of Ireland, is attributed to him, and his style was, Rex Anglię, dominus Hibernię, dux Normaniæ, dux Aquitaniæ, & Comes Andegauiæ. King of England, lord of Ireland, duke of Normandy, duke of Acquitaine, and earle of Aniou. That Ireland is a Dominion seperate and diuided from England, it is euident by our bookes, 20.H.6.8. Sir Iohn Pilkingtons case, 32.H.6.25. 20. Eliz. Dyer 360. Plow. Com. 360. And 2.R.3.12. Hibernia habet parliamentum, & faciunt leges, et nostra statuta non ligant eos, quia non mittunt milites ad parliamentum (which is to be vnderstood, vnlesse they be especially named) sed personæ eorum sunt subiecti regis, sicut inhabitantes in Calesia, Gasconia, & Guyan. Wherein it is to be obserued, that the Irish man (as to his subiection) is compared to men borne in Callice, Gascoigne, and Guyan. Concerning their Lawes, Ex rotulis patentium de Anno 11. Regis H.3. there is a Charter which that king made, beginning in these words: Rex &c. Baronibus, militibus, et omnibus libere tenentibus L. salutem, satis vt credimus vestra audiuit

audiuit discretio, quod quando bonæ memoriæ Iohannes quondã Rex Anglię pater noster venit in Hiberniam ipse duxit secum viros discretos & legis peritos, quorum communi cõsilio & ad instantiam Hibernensiũ statuit & præcepit leges Anglicanas in Hibernia, ita quod leges eaſdem in scripturas redactas reliquit sub sigillo suo ad scaccarium Dubliñ. So as now the Lawes of England became the proper Lawes of Ireland: and therefore, & because they haue Parliaments holden there, whereat they haue made diuers particular lawes concerning that dominion, as it appeareth in 20.H.6.8.& 20.Eli.Dyer 360. and for that they retaine vnto this day diuers of their ancient customes, the booke in 20.H.6.8. holdeth, that Ireland is gouerned by lawes and customes seperate & diuers from the lawes of England. A voyage royall may be made into Ireland. Vide 11.H.4.7. & 7.E.4.27. which proueth it a distinct dominion. And in Anno 33.reg.El. it was resolued by all the Iudges of England in the case of Ourke an Irishman, who had committed high Treason in Ireland, that he by the statute of 33.H.8.ca.23. might be indited, arraigned, and tried for the same in England, according to the puruiew of that statute: the words of which statute be, That all Treasons &c. committed by any person out of the realme of England, shalbe from henceforth inquired of &c. And they all resolued (as afterward they did also in Sir John Perrots case) That Ireland was out of the Realme of England, and that Treasons committed there, were to bee tried within England by that Statute. In the Statute of 4.H.7.cap.24. of Fines, prouision is made for them that be out of this the land, & it is holden in Pl.com̃ in Stowels case 375. that he that is in Ireland, is out of this land, and consequently within that prouiso. Might not then the like plea be deuised as well against any person borne in Ireland, as (this is against Caluin that is a Post-nati) in Scotland? For the Irishman is borne extra ligeantiam regis regni sui Angliæ &c. which be verba operatiua in the plea: But all men know, that they are naturall borne Subiects, and capable of and inheritable to lands in England. Lastly, to conclude this part with Scotland it selfe; in auncient time part of Scotland (besides Berwick) was within the power and ligeance of the K. of England, as it appeareth by our bookes 42.E.3.2. the L. Beaumonts case, 11.E.3.c.2.&c. and by presidents hereafter mentioned; and that part (though it were vnder the K. of Englands ligeance and obedience) yet was it gouerned by the lawes of Scotland. Ex rott.Scotię, An.11.E.3. amongst the records in the Tower of London. Rex &c. Constituimus Rich. Talebot Iusticiarium nostrum villæ Berwici

Scotland. Scotia.

Berwici ſuper Twedam, ac omnium aliarum terrarum noſtrarum in partibus Scotiæ, ad faciend' omnia & ſingula quæ ad officium Iuſticiarij pertinẽt ſecundum legem et conſuetudinem regni Scotiæ. And after Anno 26.E.3.ex eodem Rott. Rex Henrico de Percey & Richardo de Neuill &c. volumus et vobis et alteri veſtrum tenore prẽſentium committimus et mandamus, quod homines noſtri de Scotia ad pacem et obedientiam noſtram exiſtentes, quod ipſi legibus, libertatibus, et liberis conſuetudinibus, quibus ipſi et anteceſſores ſui tempore celebris memoriæ Alexandri quondam Regis Scotię rationabiliter vſi fuerunt, vti & gaudere deberent, prout in quibuſdam Indenturis &c. plenius dicit contineri. And there is a writ in the Regiſter 295. a Dedimus poteſtatem recipiendi ad fidem & pacem noſtram homines de Galloway. Now the caſe in 42.Edw.3.2. (which was within ſixteene yeares of the ſayd Graunt, concerning the Lawes in 26.E.3.) ruleth it, That ſo many as were borne in that part of Scotland, that was vnder the ligeance of the king, were no aliens, but inheritable to lands in England; yet was that part of Scotland in another kingdome gouerned by ſeuerall Lawes &c. And if they were naturall Subiects in that caſe, when the king of England had but part of Scotland, what reaſon ſhould there be, why thoſe that are borne there, when the king hath all Scotland, ſhould not be naturall Subiects, and no aliens? So likewiſe Berwicke is no part of England, nor gouerned by the Lawes of England; and yet they that haue bin borne there, ſince they were vnder the obedience of one king, are naturall borne Subiects, and no aliens, as it appeareth in 15.R.2.cap.7.&c. Vide 19.H.6.35.et 39.H.6.39. And yet in all theſe caſes and examples, if this new deuiſed plea had beene ſufficient, they ſhould haue beene all aliens againſt ſo many iudgements, reſolutions, authorities, and iudiciall Preſidents, in all ſucceſſions of ages. There were ſometimes in England, whiles the Heptarchie laſted, ſeuen ſeuerall crowned kings of ſeuen ſeuerall and diſtinct kingdomes, but in the end the Weſt Saxons got the Monarchie, and all the other kings melted (as it were) their Crownes to make one imperiall Diademe for the king of the Weſt Saxons ouer all. Now when the whole was vnder the actuall and reall ligeance and obedience of one K. were any that were borne in any of thoſe ſeuerall and diſtinct kingdomes, aliens one to another? Certainely they being borne vnder the obedience of one K. and Soueraigne, were all naturall borne ſubiects, and capable of and inheritable vnto any lands in any of the ſaid kingdomes.

Berwicke.

In

In the holy Historie reported by S. Luke, Ex dictamine spiritus sancti, cap. 21. & 22. Act. Apostolorum it is certaine, that S. Paule was a Iew, borne in Tarsus, a famous Citie of Cilicia: For it appeareth in the said 21. chapter, 39. verse, by his owne wordes: Ego homo sum quidem Iudæus a Tarso Ciliciæ non ignotæ ciuitatis municeps. And in the 22. chapter, 3. verse, Ego sum vir Iudæus natus Tarso Ciliciæ &c. and then made that excellent Sermon there recorded, which when the Iewes heard, the Text sayth, vers. 22. Leuauerunt vocem suam dicentes, tolle de terra huiusmodi, non enim fas est eum viuere: vociferantibus autem eis & proijcientibus vestimenta sua, & puluerem iactantibus in aerem: Claudius Lysias the popular Tribune, to please this turbulent and prophane multitude (though it were vtterly against iustice and common reason) the Text sayth, Iussit Tribunus induci eum in castra, 2. flagellis cædi, & 3. torqueri eum (quid ita?) vt sciret propter quam causam sic acclamarent: and when they had bound Paule with cords, ready to execute the Tribunes vniust commaundement, the blessed Apostle (to auoid vnlawfull and sharpe punishment) tooke hold of the law of a Heathen Emperor, and said to the Centurion standing by him, Si hominem Romanum & indemnatum licet vobis flagellare? Which when the Centurion heard, he went to the Tribune and said, Quid acturus es? Hic enim homo ciuis Romanus est. Then came the Tribune to Paule, & said vnto him: Dic mihi si tu Romanus es? at ille dixit, etiam. And the Tribune answered, Ego multa summa ciuitatē hanc consequutus sum. But Paule not meaning to conceale the dignitie of his birthright, said, Ego autem & natus sum: As if hee should haue said to the Tribune, You haue your freedome by purchase of money, and I (by a more noble meane) by birthright and inheritance. Protinus ergo (sayth the Text) discesserunt ab illo qui illum torturi erant, Tribunus quoque timuit postquam resciuit, quia ciuis Romanus esset & quia alligasset eum. So as hereby it is manifest, that Paule was a Iew, borne at Tarsus in Cilicia, in Asia Minor, and yet being borne vnder the obedience of the Romane Emperor, hee was by birth a Citizen of Rome in Italy in Europa, that is, capable of and inheritable to all priuiledges and immunities of that Citie. But such a plea as is now imagined against Caluin might haue made Saint Paule an Alien to Rome. For if the Emperour of Rome had seuerall ligeances for euery seuerall Kingdome and Countrey vnder his obedience, then might it haue beene said against S. Paule, that hee was extra ligeantiam imperatoris regni sui Italiæ, & infra

ligeanti-

ligeantiam imperatoris regni ſui Ciliciæ &c. But as Saint Paule was Iudæus patria & Romanus priuilegio, Iudæus natione & Romanus iure nationum; So may Caluin ſay, that hee is Scotus patria & Anglus priuilegio, Scotus Natione & Anglus iure Nationum.

Samaria in Syria was the chiefe Citie of the ten Tribes: but it being vſurped by the King of Syria, and the Iewes taken priſoners, and carried away in captiuitie, was after inhabited by the Paynims. Now albeit Samaria of right belonged to Iurie, yet becauſe the people of Samaria were not vnder actuall obedience, by the iudgement of the chiefe Iuſtice of the whole world they were adiudged Alienigenæ, aliens. For in the Euangeliſt S. Luke, cap. 17. when Chriſt had cleanſed the ten leapers, Vnus autem ex illis (ſaith the Text) vt vidit quia mundatus eſſet regreſſus eſt, cum magna voce magnificans deum & cecidit in faciem ante pedes eius gratias agens, & hic erat Samaritanus. Et Ieſus reſpondens dixit, nonne decem mundati ſunt, & nouem vbi ſunt? Non eſt inuentus qui rediret & daret gloriam Deo niſi hic alienigena. So as by his iudgement this Samaritane was Alienigena, a ſtranger borne, becauſe he had the place, but wanted obedience. Et ſi deſit obedientia non adiuuat locus. And this agreeth with the Diuine, who ſaith, Si locus ſaluare potuiſſet, Satan de cœlo pro ſua inobedientia non cecidiſſet, Adam in paradiſo non cecidiſſet, Lot in monte non cecidiſſet, ſed potius in Sodom.

6. Now reſteth the ſixt part of this diuiſion, that is to ſay, ſixe demonſtratiue illations or concluſions, drawne plainly and expreſſely from the premiſſes.

1. Euery one that is an alien by birth, may be or might haue beene an enemy by accident: but Caluin could neuer at any time be an enemy by any accident; ergo he cannot be an alien by birth. Vide 33. H. 6. fol. 1. the difference betweene an alien enemy and a ſubiect traytor. Hoſtes ſunt qui nobis, vel quibus nos bellum decernimus, cæteri proditores, prædones &c. The maior is apparent, and is proued by that which hath beene ſaid. Et vide Magna Charta cap. 30. 19. E. 4. 6. 9. E. 3. cap. 1. 27. E. 3. cap. 2. 4. H. 5. cap. 7. 14. E. 3. ſtat. 2. cap. 2. &c.

2. Whoſoeuer are borne vnder one naturall ligeance and obedience, due by the Law of Nature to one Soueraigne, are naturall borne Subiects: But Caluin was borne vnder one naturall ligeance and obedience, due by the Law of Nature to one Soueraigne; ergo hee is a naturall borne Subiect.

3. Who=

3. Whatsoeuer is borne within the kings power or protection, is no alien: But Caluin was borne under the kings power and protection; ergo he is no alien.

4. Euery stranger borne must at his birth be either amicus or inimicus: But Caluin at his birth could neither bee amicus nor inimicus; ergo he is no stranger borne. Inimicus he cannot be, because he is subditus, and for that cause also hee cannot bee amicus; neither now can Scotia bee said to bee solum amici, as hath beene said.

5. Whatsoeuer is due by the law or constitution of man, may be altered: but naturall ligeance or obedience of the subiect to the Soueraigne cannot be altered; ergo naturall ligeance or obedience to the Soueraigne is not due by the law or constitution of man. Againe, whatsoeuer is due by the law of Nature, cannot be altered: but ligeance and obedience of the subiect to the Soueraigne, is due by the law of Nature; ergo it cannot be altered. It hath been proued before, that ligeance or obedience of the inferior to the superior, of the subiect to the Soueraign, was due by the law of Nature many thousand yeeres before any law of man was made: which ligeance or obedience (being the onely marke to distinguish a subiect from an alien) could not be altered, therefore it remaineth still due by the law of Nature. For Leges naturæ perfectissimè sunt et immutabiles, humani vero iuris condito sẽper in infinitum decurrit, & nihil est in eo q̃ perpetuo stare possit. Leges humanæ nascuntur, viuunt, & moriuntur.

Lastly, whosoeuer at his birth cannot be an alien to the king of England, cannot be an alien to any of his subiects of Englãd: But the plaintife at his birth could be no alien to the k. of England; ergo the plaintife cannot be an alien to any of the subiects of England. The maior and minor both be propositiones p̃spicuè veræ. For as to the maior it is to be obserued, that whosoeuer is an alien borne, is so accounted in law in respect of the king: and that appeareth first by the pleading so often before remembred, that he must be extra ligeantiam Regis, without any mention making of the subiect: 2. When an alien borne purchaseth any lands, the king onely shall haue them, though they be holden of a subiect, in which case the subiect looseth his Seigniorie. And as it is said in our bookes, an alien may purchase ad proficuum Regis; but the act of Law giueth the alien nothing: and therefore if a woman alien marrieth a subiect, she shall not be endowed, neither shall an alien be tenant by the courtesie. Vide 3. H. 6. 55. 4. H. 3. 179. 3. The subiect shall plead, that the defendant is an

alien borne for the benefit of the King, that he vpon office found may seize, and 2. that the tenant may yeeld to the King the land, and not to the alien, because the King hath best right thereunto. 4. Leagues betweene our Soueraigne and others are the only meanes to make aliens friends, & fœdera percutere, to make leagues, onely and wholly pertaineth to the King. 5. Warres do make aliens enemies, and bellum indicere belongeth onely and wholly to the King, and not to the subiect, as it appeareth in 19. E.4. fol.6. 6. The King onely without the Subiect may make not onely letters of Safeconduct, but Letters patents of Denization, to whom, and how many he will, and enable them at his pleasure to sue any of his subiects in any action whatsoeuer, reall or personal, which the King could not do without the subiect, if the subiect had any interest giuen vnto him by the Law in any thing concerning an alien borne: nay the Law is more precise herein, then in a number of other cases, of higher nature: for the King cannot grant to any other to make of strangers borne denizens, it is by the Law it selfe so inseperably and indiuidually annexed to his royall person (as the booke is in 20. H.7. fol.8.) For the Law esteemeth it a point of high Prerogatiue, Ius maiestatis, & inter insignia summæ potestatis, to make aliens borne subiects of the Realme, and capable of the lands and inheritances of England, in such sort as any natural borne subiect is. And therefore by the Statute of 27. H.8. cap.24. many of the most ancient prerogatiues and royall flowers of the crowne, as authoritie to pardon Treason, Murther, Manslaughter, & Felony, power to make Justices in Eyre, Justices of Assise, Justices of Peace and Gaole Deliuerie, & such like, hauing been seuered and diuided from the crowne, were againe reunited to the same: but authority to make letters of Denization, was neuer mentioned therein to be resumed, for that neuer any claymed the same by any pretext whatsoeuer, beeing a matter of so high a point of Prerogatiue. So as the pleading against an alien, the purchase by an alien, leagues and warres betweene aliens, denizations and safeconducts of aliens, haue aspect onely and wholly vnto the King. It followeth therefore, that no man can be alien to the subiect that is not an alien to the King, Non potest esse alienigena corpori, qui non est capiti, non gregi qui non est Regi.

The authorities of Law cited in this case for maintenance of the iudgement, 4. H.3. tit Dower. Bracton lib.5. fo.427. Fleta lib. 6. cap.47. In temps E.1. Hinghams Report, 17. Ed.2. cap.12. 11. Ed.3.

cap.

cap.2. 14.E.3.Statut de Francia. 42.E.3.fo.2. 42.E.3. cap.10. 22.Lib. Ass.25. 13.R.2.cap.2. 15.R.2. cap.7. 11.H.4. fol.26. 14.H.4. fol.19. 13.H.4. Statutum de Guyan. 29.H.6. tit Estoppell 48. 28.H.6. cap.5. 32.H.6.fol.23. 32.H.6.fol. 26. Littl.temps E.4.lib.2.cap.Villenage. 15. E.4. fol.15. 19.E.4.6. 22.E.4. cap.8. 2.R.3.2. & 12. 6.H.8.fol.2. Dyer. 14.H.8.cap.2. No manner of stranger borne out of the Kings obeysance, 22.H.8. cap.8. Euery person borne out of the realme of England, out of the Kings obeysance, 32.H.8. cap.16. 25.H. 8. cap.15. &c. 4.Edw.6. Plow.Comment fol.2. Fogasses case, 2.& 3. Ph.& Ma. Dyer 145. Shirleyes case, 5.Eliz. Dyer 224. 13.Eliz. cap.7. de Bankrupts: All Commissions auncient and late, for the finding of offices, to intitle the King to the lands of Alien nee: Also all Letters Patents of Denization of auncient and later times, doe proue, That he is no alien that is borne vnder the Kings obedience.

The 5. generall part, Concerning inconueniences.

Now are we come to consider of legall inconueniences: and first of such as haue beene obiected against the plaintife, and secondly of such as should follow, if it had bin adiudged against the plaintife.

Of such inconueniences as were obiected against the plaintife, there remaine onely foure to be answered: for all the rest are clearely and fully satisfied before. 1. That if Postnati should be inheritable to our lawes and inheritances, it were reason that they should be bound by our Lawes; but Postnati are not bound by our Statute or common Lawes: for they hauing (as it was obiected) neuer so much freehold or inheritance, cannot be returned of Juries, nor subiect to scot or lot, nor chargeable to Subsidies or Quinzimes, nor bound by any act of Parliament made in England. 2. Whether one be borne within the kingdome of Scotland, or no, is not tryable in England, for that it is a thing done out of this Realme, and no Jurie can be returned for the triall of any such issue: and what inconuenience should thereof follow, if such pleas that wanted triall should be allowed (for then all aliens might imagine the like plea) they that obiected it, left it to the consideration of others. 3. It was obiected, That this innouation was so dangerous, that the certaine euent thereof no man could foresee; and therefore some thought it fit, that things should stand and continue as they had beene in former time, for feare of the worst. 4. If Postnati were by law legitimated in England, it was obiected what inconuenience & confusion should follow,

if (for the punishment of vs all) the kings royall issue should faile &c. whereby those kingdomes might againe bee diuided. All the other arguments and obiections that haue beene made, haue beene all answered before, and need not to bee repeated againe.

1. To the first it was resolued, That the cause of this doubt was the mistaking of the law: For if a Postnatus doe purchase any lands in England, he shall be subiect in respect thereof not onely to the Lawes of this Realme, but also to all seruices and contributions, and to the payment of Subsidies, Taxes, & publique charges, as any denizen or Englishman shalbe; nay, if he dwell in England, the king may commaund him by a writ of Ne exeat Regnum, that he depart not out of England. But if a Postnatus dwell in Scotland, and haue landes in England, hee shal be chargeable for the same to all intents and purposes, as if an Englishman were owner thereof, & dwelt in Scotland, Ireland, in the Isles of Manne, Iernsey, or Gersey, or elsewhere. The same Law is of an Irishman that dwels in Ireland, and hath land in England. But if Postnati, or Irishmen, men of the Isles of Manne, Iernsey, Gersey, &c. haue lands within England, and dwel here, they shalbe subiect to all seruices & publique charges within this Realme, as any Englishman shall be. So as to seruices & charges the Postnati and Englishmen borne are all in one predicament.

2. Concerning the triall, a threefold answere was thereunto made and resolued. 1. That the like obiection might be made against Irishmen, Gascoines, Normanes, men of the Isles of Manne, Iernsey, and Gersey, of Berwicke &c. al which appeare by the rule of our bookes to be naturall borne subiects; and yet no Jury can come out of any of those countries or places, for triall of their births there. 2. If the demãdant or plaintife in any action cõcerning lands be borne in Ireland, Iernsey, Gersey &c. out of the Realme of England, if the tenant or defendant plead, that he was born out of the ligeance of the king &c. the demãdãt or plaintife may reply, that he was borne vnder the ligeance of the king at such a place within England; and vpon the euidẽce the place shall not be materiall, but the only issue shalbe, whether the demãdant or plaintife were borne vnder the ligeance of the king in any of his kingdomes or dominions soeuer: and in that case the Jury (if they will) may find the speciall matter, viz. the place where he was borne, and leaue it to the iudgement of the Court: and that Iurors may take knowledge of things done

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out of the Realme in this and like cases, vide 7.H.7.8.b. 20.Ed.3. Auerrement 34. 5.R.2.tit Triall 54. 15.E.4.15. 32.H.6.25. Fitz. Na.Br. 196. Vide Dowdales case in the sixt part of my Reports, fol. 47. and there diuers other iudgements be vouched. 3. Browne in Anno 32.H.6. reporteth a iudgement then lately giuen, that where the defendant pleaded, that the plaintife was a Scot, borne at S. Johns Towne in Scotland, out of the ligeance of the king: whereupon they were at issue, and that issue was tried where the writ was brought, and that appeareth also by 27.Ass.pl.24. that the Jury did find the Prior to be borne in Gascoine: for so much is necessarily proued by the words (troue fuit.) And 20.Ed.3.tit Auerrement 34. in iuris vtrum, the death of one of the vouchees was alledged at such a castle in Brittaine, and this was inquired of by the Jury: and it is holden in 5.R.2.tit Triall 54. That if a man be adhering to the enemies of the king in Fraunce, his land is forfeitable, and his adherencie shalbe tried where the land is, as oftentimes hath beene done, as there it is said by Belknap: And Fitz.Nat.Bre.196. in a Mortdaunc', if the auncestor died in itinere peregrinationis suæ vers. terram sanctam, the Jury shall inquire of it. But in the case at the barre, seeing the defendant hath pleaded the truth of the case, and the plaintife hath not denied it, but demurred vpon the same, and thereby confessed all matters of fact, the Court now ought to iudge vpon the especial matter, euen as if a Jurie vpon an issue ioyned in England, as is aforesaid, had found the especiall matter, and left it to the Court.

3. To the third it was answered and resolued, That this iudgemẽt was rather a renouation of the iudgemẽts & censures of the reuerend Judges and Sages of the law in so many ages past, then any innouation, as it appeareth by the bookes & booke cases before recited: neither haue Judges power to iudge according to that which they thinke to be fit, but that which out of the lawes they know to be right and consonant to law. Iudex bonus nihil ex arbitrio suo faciat, nec proposito domesticæ voluntatis sed iuxta leges & iura pronuntiet. And as for timores, feares grounded vpon no iust cause, Qui non cadunt in constantem virum, vani timores æstimandi sunt.

4. And as to the fourth, it is lesse then a dreame of a shadow, or a shadow of a dreame: for as it hath beene often said, Naturall legitimation respecteth actuall obedience to the Soueraigne at the time of the birth: for as the Antenati remaine aliens as to the Crowne of England, because they were born when there were seuerall kings of the seuerall kingdomes, and the

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vniting of the Kingdomes by diſcent ſubſequent, cannot make him a Subiect to that Crowne to which he was an alien at the time of his birth: So albeit the Kingdomes, (which Almighty God of his infinite goodneſſe and mercy diuert) ſhould by diſcent bee diuided, and gouerned by ſeuerall Kings; yet was it reſolued, That all thoſe that were borne vnder one naturall obedience, whiles the Realmes were vnited vnder one Soueraigne, ſhould remayne naturall borne Subiects, and no aliens; for that naturalization due and veſted by birthright, cannot by any ſeperation of the Crownes afterward be taken away: nor he that was by iudgement of Law a naturall Subiect at the time of his birth, become an alien by ſuch a matter ex poſt facto. And in that caſe, vpon ſuch an accident, our Poſtnatus may be ad fidem vtriuſque Regis, as Bracton ſayth in the afore-remembred place, fol. 427. Sicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita nec debet Francigena & alienigena qui fuerit ad fidem Regis Franciæ audiri placitando in Anglia: ſed tamen ſunt aliqui Francigenæ in Francia, qui ſunt ad fidem vtriuſque, & ſemper fuerunt ante Normanniam deperditam & poſt, & qui placitant hic & ibi, ea ratione qua ſunt ad fidem vtriuſque, ſicut fuit Willihelmus comes mareſchallus & manens in Anglia, & M. de Gynes manens in Francia, & alij plures. Concerning the reaſon drawne from the Etymologies, it made againſt them, for that by their owne deriuation, alienæ gentis and alienæ ligeantiæ is all one: But argunents drawne from Etymologies, are too weake and too light for Judges to build their iudgements vpon: for Sœpenumero vbi proprietas verborum attenditur, ſenſus veritatis amittitur: and yet when they agree with the iudgement of Law, Judges may vſe them for ornaments. But on the other ſide, ſome inconueniences ſhould follow, if the plea againſt the plaintiſe ſhould bee allowed: for firſt it maketh Ligeance locall, videlicet, Ligeantia Regis regni ſui Scotiæ, and Ligeantia Regis regni ſui Angliæ: whereupon ſhould follow, Firſt, That faith or ligeance, which is vniuerſall, ſhould bee confined within locall limits and bounds. Secondly, That the Subiect ſhould not bee bound to ſerue the King in peace or in warre out of thoſe limits. Thirdly, it ſhould illegitimate many, and ſome of noble blood, which were borne in Gaſcoigne, Guyan, Normandie, Callice, Tournay, Fraunce, and diuers other of his Maieſties Dominions, whiles the ſame were in actuall obedi-

obedience, and in Berwicke, Ireland, Iernsey, and Gersey, if this plea should haue been admitted for good. And thirdly, this strange and new deuised plea inclineth too much to countenance that dangerous & desperate error of the Spencers, touched before, to receiue any allowance within Westminster Hall.

In the proceeding of this case, these thinges were obserued, and so did the chiefe Iustice of the Common pleas publiquely deliuer in the end of his argument in the Exchequer Chamber. First, That no commandement or message by word or writing was sent or deliuered from any whatsoeuer to any of the Iudges, to cause them to incline to any opinion in this case: which I remember, for that it is honorable for the State, and consonant to the Lawes and Statutes of this Realme. Secondly, there was obserued, what a concurrence of Iudgemēts, Resolutions, and Rules there bee in our bookes in all ages concerning this case, as if they had beene prepared for the deciding of the question of this point: and that (which neuer fell out in any doubtfull case) no one opinion in al our bookes is against this iudgement. Thirdly, That the fiue Iudges of the kings Bench, who adiorned this case into the Exchequer Chamber, rather adiorned it for weight then for difficultie, for all they in their argumēts vna voce concurred with the iudgement. Fourthly, That neuer any case was adiudged in the Exchequer Chamber with greater concordance and lesse varietie of opinions, the Lo. Chauncellor and twelue of the Iudges concurring in one opinion. Fifthly, That there was not in any remembrance so honourable, great, and intelligent an auditorie at the hearing of the arguments of any Exchequer Chamber case, as was at this case now adiudged. Sixtly it appeareth, That Iurisprudentia legis communis Angliæ est scientia socialis & copiosa: sociable, in that it agreeth with the principles and rules of other excellent Sciences, diuine and humane: copious, for that quamuis ad ea quæ frequentius accidunt iura adaptantur; yet in a case so rare and of such a qualitie, that losse is the assured end of the practise of it (for no alien can purchase lands, but he looseth them, and ipso facto the king is intituled thereunto, in respect whereof a man would thinke few men would attempt it) there should be such a multitude and Farrago of authorities in all successions of ages, in our bookes and booke cases, for the deciding of a point of so rare an accident. Et sic determinata & terminata est ista quæstio.

Super

Caluins case.

Super quo visis & per cur̃ domini Regis hic plenius intellect' omnibus & singulis præmissis, diligenterque inspect' & examinat̃, maturaq; deliberatione inde habit̃, pro eo quod videtur cur̃ domini Regis nunc hic quod placitum prędictum per prædict' Richardum Smyth et Nich. Smyth superius placit̃ minus sufficiens in lege exist. ad prædict' Robertum Caluin a respons. ad breue suum prædictum habend' repellend'. Ideo consideraț est per cur̃ domini Regis nunc hic, quod prædict' Richardus Smyth & Nicholaus Smyth ad breue ipsius Roberti vlterius respond'.

Mich.

Michaelis 26. & 27. Elizabeth.

Bulwers case.

BVlwer de Dalling in Norff. port action sur son case enuers George Smith, et count coment vn Henry Heydon esquier recouer xx. l. &c. in le cōmon bank enuers le pl, & puis iudgemēt, & deuant execution, le dit Henry Heydon morust; & puis le dit def. ceo sciant, al W. in le County de Norff. a vtlager le pl sur le dit iudgement in le nosme de Henry Heydon malitiosè & deceptiuè machinatus est; in performance de quel le def. Trin̄ 23. Eliz. al Westm̄ in Midd̄ purchase vn bre de Capias ad satisfaciendum in le nosm̄ le dit Henry sur le dit iudgemēt, direct al vic de Londres, queux p le procurem̄t le dit def. retorne, Non est inuentus, sur q̄ le def. purchase vn bre de Exigent in le nosme le dit Henry, quel bre les ditz vic p procurem̄t le dit def. retorne, q̄ al sesial Hustings le dit ore pl auoit este demaund, Et ad Hustingum de coībus plitis tent in Guyldhalda ciuitat prædict', die lunę prox' post festū Apostol Simon et Iudę, ann̄ supradict', prędict' le ore pl quint exactus fuit &c. & ideo ipse le pl vtlagatus fuit. Et puis, s. Pasch. 24. Eliz. le def. purchase hors del dit common bank vn bre de Capias vtlagatum, in le nosme le dit Henry, direct al Vicont de Norff. a prender son corps &c. le quel bre fist mention, q̄ le dit ore pl fuit vtlage die lunę prox' ante festū Apostolorū Simonis & Iudę &c. et le dit bre le def. al W. auantdit in le dit Countie de Norff. deliuer al vn Robert Godfrey adonques deputie del vicont de mesme le Countie, al intent, que il executer le dit briefe, le quel Robert, per force del dit briefe prist et arrest le dit ore pl, et luy imprison p le space de 2. moys iesque le ore pl purchase son charter de pardon, per reason de quel vtlagarie il forfeit touts ses biens et chateux. Et sur cest count le defendant demurre in ley: Et le principal cause del demurrer fuit, pur ceo que cest action per le pretence del defendant

couient dauer estre port in Midd ou le tort commence, car la (cõe fuit dit) le def. purchase cibñ le Cap ad satisfac', come le Exigent, et le Cap vtlag. auxi. Et comẽt q̃ le Cap vtlag' fuit execute in Norff. vnc̃ lacc̃ couiẽt eẽ port ou le tort cõmẽce: cõe in le cas de cõspirac̃ in 42. Ed. 3. 14. & dius auters cases fuer̃ myse. Auxi, p le vtlagat, q̃ fuit in Londres, toutz ses biens & chateux fuer̃ forfeits, ou est pluis reasõ a porter lac̃ q̃ in Norff. Mes fuit rñd & resolue, q̃ laction fuit bien port in Norff. car est vn maxime in ley, qd' ibi semp debet fieri triatio, vbi iuratores meliorẽ possunt habere notitiã, & in Norff. fuit le visible tort, car la le pl̃ fuit imprison p le space de 2. moys: & pur ceo ꝑra graũd reason q̃ le pl̃ poit aũ son acc̃ la, & nõ cõstat p le record queux biens ou chateux le pl̃ ad al temps del vtlagat̃, mes pur aggrauating des dãmages le pl̃ poit doner in euidence q̃ux biens et chateux il ad forfeit per le vtlagarie. Et cest action consist sur 2. principal parts, lun, matter de record, et lauter, matter in fait, et nul des matters del record, mes est mixt oue matters in fait, et nul matter in fait, mes est mixt oue matter de record. Car les bẽes et le vtlagat̃ sont matters de record, mes mixt oue matters in fait, s. le purchasing et prosecution de eux per le def. in nosme de Henrie Heydon, queux sont matters in fait: auxy lemprisonment est matter in fait, mes ceo est mixt oue le briefe de Capias vtlagatum q̃ est de record, s. si le pl̃ fuit arrest p vertue de ceo: et matters in fait sont solement triable per pays et nemy matters de record. Et quant lun matter in lun Countie est dependant sur le matter in lauter Countie, la le pl̃ poit eslier in q̃l Countie il voile porter son action (sinon que le defendant sur le general issue plede, serra preiudice de son trial, come il ne serra in cest case) Come si 2. conspire de enditer vn in vn Countie, et ils p lour malicious ꝓsecution font execution del conspiracie in auter Countie, et la cause le partie deste indite, le plaintife poit auer son action de conspiracie in q̃l Countie que il voit, car ils mittont lour conspirace in lun Countie, in executiõ in lauter Countie, et le matter de record del inditement est mixt oue matter in fait: Mes sils conspiront in vn Countie, per force de quel conspiracy sans aleun auter act p eux, il est indite in auter Countie, la le bẽe couient este port in le Countie ou le conspiracie fuit, car les def. ount fait riens in le Countie ou le indictment fuit, ne fuer̃ parties ou priuies al trouer del indictm̃t, forsq̃ solement p le conspiracie in lauter Countie. Et ceo appiert in 14. E. 4. 3 b. et issint les liures in 42. E. 3. 14, 20. H 6. 10. Fitz. N. B. 116. b. et auterz liures bien reconcile. Si manasse soit fait in Esser. per que mes tenants recead in Londres, ieo aña mon action in Esser, & nemy

in Londres, car in tiel case ieo ay fait riens in Londres, 9.H.6. 42. En touts cases quant laction est foundue sur 2. choses, & ambideux sont material ou trauersable, et lun sans lauter ne mainteine laction, la le pl' poit eslier a porter son acc in ẽides Counties il voit: Come si seruant soit retaine in vn Countie et dept in auter: et oue ceo accord 41.Ed.3.fol.1. 34.H.6.18. 38.H.6.15. 14. E.4.6. 20.H.6.11. 29.H.8.Dier 38. Vide 20.E.3.25.&c. Jsslnt si hõe soit arrest in execution in vn County & il escape in auter County, le pl' poit eslier a porter laction in quel des Counties il voit: et oue ceo accord 14.E.4.3. 30.H.6.6. 11.Eliz.278. Jsslnt in bre Dannuitie foundue sur prescription vers home de religion, ou corps corporate, ou lesglise ou mealson est in vn countie, et le seisin est alledge in auter Countie; le pl' poit eslier in quel Countie il voit porter son action, 48 Ed.3.26. 4.H.4.1. 4.H.6.5.b. 10.H.6.19. 39. H.6.15. 2.E.4.28. 4.Ed.4.26.&c.Fitz.Nat.Br.152. Autermt, si annuitie soit grant in vn countie, destre paie in auter, action gist ou le grant fuit: et oue ceo accord 8.H.6.23. Jsslnt si home cite vn in vn Countie, dappearer deuant ladmiral in auter Countie, pur chose fait in le corps del Countie, per force de que le ptie appiert, il poit auer son action in lun Countie ou lauter a son pleasure, 5. Mar Dier 159.b. Vide 42.E.3.14. 44.E.3.31.32. 46.E.3.8. 3.H.4.3.a. 38.H.6.14. 14.E.4.3. Nota la ley de Court Xpien. Jsslnt si def. iect ption in lun Countie, & remaine in auter Countie, il poit porter laction in quel des Counties il luy pleist: Vide 20.H.6.10. Jsslnt si hõe ad ferust vn in vn Countie, et il morust in autr Coũtie, appeal de murder poet auer estre port in lũ Countie ou lauter: et vncore le def. fist riens in le Countie ou le ptie morust, mes le mort que insuist sur le ferue fait le felonie, 18. Ed.3.32. 9.H.6. 63. 45.Ass.pla. 9. 43.Ed.3. 3.H.7.12. 4.H.7.18. 6.H.7.10. 11.H.4. 93. Si home commit Robberie in vn Countie, et carie les biens in diuers Counties, le ptie robbe poit auer appeale de felonie in quel des Counties il voit, mes nemy appeale de Robberie mes solemnt in le County ou le Robbery fuit fait; car est felony in toutz les Counties ou les biens sont eports (car felonie ne deuest ppertie) mes nest robbery (que couient estre fait al person dun hõe) mes solemnt in le Countie ou le robberie fuit fait. Vide 4.H.7.5.b. 29. H.8.39. 40. Dier. 11.H.4.93. Vide 3.E.3.tit Ass. 446. In Det, si home count dun lease pur ans in vn County, de tre in aut Coũtie, il couient porter son action ou le lease fuit fait, et nemy ou le tre gist; car laction est foundue sur le contract fait p le lease: 38.H.6.15. accord p Cur. 8.H.6.23. acc. Vide 4.H.6.18. 14.Ed.4.3. 29.H.9.40. Dier. Et issint le ley bien explaine in case in q sõt va-

rieties des opinions in nostr̃ liures. Mes si lease soit fait in vn Countie, & le terre gist en auter, laction de Wast serra port ou le terr̃ gist, & nemy ou le lease fuit fait, coment q̃ le terme soit passe, car le tre & damages, ou damages solement pur le wast, que est local, serra recouer, 14.E.4.3. accord'. Si home assume de curer vn in vn Countie, & misfait in auter Countie, le pl̃ ad election a porter son action in q̃l des Counties il voit: Et oue ceo accord̃ 11.R.2. tit̃ Action sur le case 37. Si home ne repaire wall in Essex, que il doit repaire, per q̃ mon terre in Mid̃ est surrounde, ieo poy porter mon action in Essex, car la est le default del def. come est adiudge in 7.H.4.8. ou ieo poy auer ceo in Mid̃, car la ieo aye le damage, come est ꝓue per 11.R.2. tit̃ Action sur le case 36. Jsslint si vn forge vn Chr̃e in vn Countie, & ꝓclaime ceo in auter, le pl̃ poit ellier in quel Countie il voit porter son action, 29. H. 8. 38. Vide 22. H. 6. 5. Mes quant le defendant sur son pleder de rien culpabl̃ serra p̃iudice in son trial, la le plaintife nad election a porter son br̃e in quel Countie q̃ il voit. Vide 29. H. 8. Dier fol. 38. ou Gawyn sua appeal de Robberie in le Countie de Wiltes. ou le robberie fuit fait, enꝰs Hussey & Gibs come accessories, et count q̃ les principals, nosmes in le br̃e, & q̃ fuer̃ attaint, font le robberie in Com̃ Wiltes. & q̃ les def. feloniousm̃t al Londres, deuãt le robberie fait, abbett̃ eux a faire ceo: & fuit adiudge, q̃ com̃t q̃ le pl̃ ne poit aũ forsq; vn appeal vs le principal & accessories, & vers le principal, ceo de necessity couiẽt este port in Com̃ Wilt. vncor, pur ceo q̃ ceux de Com̃ Wilt. sur rien culp̃ plede, & Londres ne poyent ioiner, & ceux de Wilt. ne poient inḡrer de chose in L̃ondres, com̃t q̃ soit chose transitory (car in case de felony, q̃ concerne le vie de hõe, chescũ act ꝑa trie in le ꝓper Countie ou le act fuit fait in v̄itie) lappeal vers lez dits accessories abate: vide 43.E.3.17.18.19. Et est deslre obꝑue, q̃ in touts actions reals, si aleum issue iurõ sur le terr̃, ou in aleun action, in q̃ possession del terre, ou chose local, ou que iurõ sur le terr̃ p̃ reason de ceo, est dẽe recouer, touts ceux serr̃ port in le Countie ou le terr̃ gist: Come en br̃e de Droit de gard del terre, ou br̃e de Jntrusion de gard, ceux serr̃ port in le Countie ou le terr̃ gist, com̃t q̃ le refusel fuit, ou le seygniorie soit in auter Countie, 29.E.3.3. 38.H.6.14. & 22.R.2. tit̃ Brẽ 937. accord'. Jsslint in br̃e de Dr̃t de gard pur le corps tantũ, ceo serra port in le Countie ou le terr̃ est, car ceo est in le droit, & fauor del terre, 21.E.3.42. & 30.E.3.25. 9.E.3.12.13. 10.E.3.7. accord'. et le reason de 40.E.3.6. accord' oue ceo, coment q̃ le Judgem̃t est mention la deste done al contr̃. Mes br̃e de Rauishm̃t de gard ꝑa port ou le rauishm̃t fuit, & nemy ou le tre est, ou lou le corps est carrie; car

ceo

ceo est foundue sur le rauishment, 38. H. 6. 14. 22. R. 2. tit̃ Briefe 937. & 12. El. 289. Dier. Et briefe de forfeit̃ de mariage serr̃ port ou le terre est; car le briefe suppose vn intrusion in la terre: & oue ceo accord̃ le dit liure in 22. R. 2. & 38. H. 6. 15. Et briefe de valore maritagij serr̃ port ou la terre est, car le seignior ne deloigne de faire ascun tender; mes sil fait tender & lauter refuse, & il ceo alledge in le countie, donques briefe de valore maritagij gist in le countie ou le refusell fuit, 22. R. 2. tit̃ Briefe 937. 38. H. 6. 15. Briefes de Quare impedit & Quare incumbrauit serr̃ touts foits ports ou lesglise est: car p̃ lun le pl̃ recouer̃ son presentm̃t, & p̃ lauter le clarke leuesq̃ serr̃ remoue et le clarke le pl̃ admitt̃, 38. H. 6. 14. & 15. accord̃: vide 4. E. 3. 9. autrem̃t est in le case del Roy. Mes Quare non admisit serr̃ port in le coũty ou le refusel fuit, & nemy in le coũtie ou le esglise fuit; car damages solem̃t sont destre recouer, & le refusell est le commencem̃t del tort & le ground del action: & issint est le liure adiudge in 38. H. 6. 14. & 15. F. N. B. 47. b. Et Quare imped' dũ p̃bẽd serr̃ port in le countie ou le Cathedrall esglise est, & nemy in le countie ou le corps de p̃bend est; car le clarke de pl̃ est destre induct & install in le Cathedrall esglise: & oue ceo accord 21. E. 3. 5. & Dier 2. Eliz. 194. mes 43. E. 3. 24. & 15. E. 3. Brẽ 325. semble al cõtr̃: vide 24. E. 3. 37. Et issint le ley bien explaine, in vn case in que fuit diuersitie des opinions in nũe liures. Et si home al common ley ad rent issuant hors de deux counties, il ne poet auer ewe Assise in vn countie, pur ceo q̃ chescun part del terre in les deux counties est charge oue le rent, & tout serr̃ mise in vieu, come est agree 18. Ed. 2. tit̃ Assise 380. 18. E. 3. 32. 10. E. 3. 21. 10. Assise pl̃ 4. & 18. Assise pl̃ 1. mes si home fait lease pur auter vie del terre in deux counties, rend̃ rent, & le rent est arere, et cestuy q̃ vie deuie, le lessor auera act̃ de det in quel des counties il voet; car ore ceo est chaunge in det: & in cest case nul terre serr̃ mise in vieu, mes le p̃son del dettor serr̃ solement charge p̃ le cõmon ley. Issint si rent soit issuant hors del terre de B. in deux coũties, & le rent est arere, & cestuy q̃ ad le rent morust, ses executors poient auer act̃ de det vers B. in quel des counties ils voilont, sur lestat de 32. H. 8. cap. 37. car coment q̃ il couient porter laction in lun des counties, vncore al common ley le person le defendant est charge in laction de det, & nemy le terre. Et deuant le statute de 6. R. 2. cap. 2. briefe de det & accoũt vers receiuor, & autiels actions, poient estre port in tiel countie ou le partie poit estre mieulx ameine eins a responder, & le plaintf poet auer count dun contract ou receit &c. in ascun auter countie, quia debitum & contractus &c. sunt nullius loci: vide pur ceo 2. Edw. 3. 44. 6. Edw. 3. 266. & 275. 8. Edw. 3. 380.

10.E.3.7.19.E.3.Iurisd' 29.29.E.3.26.33.E.3.tit Iurisd' 57. 40.E.3.7. 3.H.6.30. 15.E.4.19. 21.E.4.88. Come in 22.H.6.9.& 10. ou le Roy grant office de surueyor del packing de touts manner de draps deins London & les liberties de ceo, q̄ sont in 2 counties, & lass. fuit port in Midd: & la Newton & Paston disoient, q̄ est graund diuersitie penter assise de rent & cest assise; car ou rent charge est issuant hors de terres in diuers counties, chescun pcell est charge oue tout, & couient q̄ touts les ten̄ del terre sont nosme, mes icy le pson est charge & nemy le terre, vncore lossice pur q̄ lassise fuit port extend in deux counties. Et si fine ou feoffem̄t soit fait de terres in deux counties oue gar̄, le Warrant Chartr̄ poet estre port in ascun des counties, 29.E.3.3. Est purueu pr lestatute de 7. R.2. cap.10. q̄ Assise de nouel disseisin ser̄ deslormes grant & fait de rent arere, due des tenem̄ts in plusors counties, destre tenus in les confines des counties, & sur ceo lassise ser̄ prise & trie pr gents de mesm̄ les counties, in mesm̄ le manner & forme come est fait dun comon de pasture in vn countie, append̄ aux ten̄ts in aut̄ countie: car, al comon ley, si home ad ewe cōmon in terre in vn countie, appendant ou apptenāt al terre in auter county, il auera deux seuerall briefes al vic̄ des seueral counties: ou si le terre a q̄ &c. gist in vn countie, & les terres in q̄ &c. gisont in seuerall counties, la il auera vn briefe de Assise al vic̄ del countie ou le terre a q̄ &c. gist, & seuerall briefes al vic̄ des counties ou les terres in q̄ &c. gisont: & tout ceo appiert in le Regist & F.N.B.180.a. Et mesm̄ la ley est, quant nusance est fait in vn countie, & le terre a q̄ &c. est in auter countie, come appiert auxi in le Regist & F.N.B.183.k. Jlsint q̄ si home ad rent in 3. ou 4. counties, semble q̄ cestuy q̄ est disseisie poet auer seuerall Assises destre prise in cosinio comitatuum: car le letter del statute de 7. R.2. est generall, de rent due des tenem̄ts in plusors counties: & cont̄ q̄ ceo ad vn reference al case de comon de pasture &c. vncore, in tant q̄ in case de common de pasture si le terre in q̄ &c. gist in diuers counties, & la terre a q̄ &c. gist in auter countie, la ser̄ tants des briefes come sont seuerall counties; de ceo insuist q̄ tiel remedie auera cestuy q̄ ad rent issuant des tr̄es in plusors counties. Auxi le case del common est mise exempli gratia & similitudinarie, & nullum simile quatuor pedibus currit: et nest necessarie, q̄ vn simile accord̄ in touts points. Et lestatute de 7. R.2. fuit fait pur satisfier vn doubt que fuit conceiue deuant; car pr ceo est purueu, que briefes in tiel case ser̄ faitz in le chaunc-erie, sauns ascun maner de contradiction, cibien des disseisins deuant faits, come in apres destre fait: & le doubt fuit sur lestatute de Magna Charta cap.12. Recognitiones de noua disseisina,

& de

& de morte anteceſſor̃ non capian̄ niſi in ſuis comitatibus: Et alcuns teigne, que ceo ne fuit obſerue q̄n les Juſtices de aſſ. ſeont in cõfinio comitatuum, & noſmement q̄n ſont xx. counties meſne int̄ les ij. counties, come in liure eſt in 5.E.4.fol.2. Mes ceſt doubt poit eſtr̄ auxy conceiue ſur le dit Aſſ.de nouel diſſ. de common, q̄n la tr̃e in q̃ &c. eſt in vn Countie, & la tr̃e in a &c. in auter countie (quel caſe ſans queſtion neſt pas reſtraine per le dit Stat̄: Car Aſſiſe de no.diſi.giſt de common de paſture al common ley, come p̄ leſtat de W.2.ca. 29. appiert) Vid̄ 10.E.3.21.& 10.Aſſ.p.4. Et ſi beſoigne fuit, leſtatute de W.2.ca.28. extend al dit caſe del Rent, p̄ q̃ eſt puruieu, Quod quotieſcunq; de cætero euenerit in Cancellaria, qd̄ in vno caſu re p̄it̄ br̃e, & in conſimili caſu, cadente ſub eodem iure, & ſimili indigente remedio, non re p̄it̄, concordent clerici in Cancellaria in breui faciendo &c. vel ad proximum parliamentum de conſenſu Iuriſperitorum fiat br̃e: et leſtatute conclude oue leffect dun maxime del Common ley, Quod Curia dñi Regis non debet deficere cõquerentibus in iuſtitia p̄quirenda. Vide 38.E.3.13. ou le caſe fuit, q̃ le roy poit br̃e de droit de la quart p̄t des diſmes & offerings de Eſgliſ de S. Dunſtone in le Weſt, in Fleetſtreet, in le Suburbs de Lõdres, enuers le Priour de S. Johns de Jeruſalem in Engliterr̃: la Candiſh p̄iſt exception al br̃e, pur c̃ q̃ conũt q̃ ceſt br̃e ẽ done per leſtatute de W.2.cap.5.verſ. finem, & Artic. Cleri ca.2. q̃r ſtat done, que il aũa br̃e Ad petendum aduocationem decimarum petitar̃ &c. & ceſt br̃e eſt conceiue de la quart p̄t des diſmes & offerings, le q̃l nẽ my garr̃ per leſtatutes, iudgemt̄ de br̃e in tant que leſtatutes ne done br̃e de la quart p̄t des diſmes? Thorpe le chief Juſtice, q̃ dõe le rule, dit, conũt q̃ leſtat̄ ne limit p̄ exp̄ſſe pols, forſq; dez diſmez, vncore ceux in le Chauncerie poient faire br̃e in conſimili caſu & le br̃e eſt aſſets bone, per q̃ rñdez. Et in 18.E.2.tit̄ Br̃e 827. br̃e dentr̃ fuit poſt in le County de Sull. le ten̄t plead releaſe del aunc̄ le pl̄ oue garr̃, q̃ fuit dedit, & troue pur le pl̄ in Londres per Jurie de Friday ſtreet, &c. p̄ que le dõt recou̇, & le ten̄t poſt attaint, & la exception fuit p̄iſe, pur c̃ q̃ in le br̃e neſt compriſe dattacher le partie, iudgement &c. & pur le pl̄ fuit dit, q̃ br̃e fuit grant al vic̄ de Lõdres de ſommoner les xxiiij. & dattacher lez xij. et auk̄ br̃e al vic̄ de Sull. dattacher le p̄tie ou le tr̃e fuit, & lun br̃e et lauk̄ fuer̄ lies in Court: a q̃ fuit dit, q̃ fuit nul ley ſpecial, q̃ mainteinera ceſt br̃e q̃ eſt hors de common courſe. Beresford le chiefe Juſtice del bank, q̃ done le rule, dit, In nouel caſe nouel remedie &c. p̄ q̃ rñdes. Et pur ceo ſi ſoit Sñr et ten̄t, et le tenancie extend in ij. Counties, in ceſt caſe ſi les rents & ſeruices ſont arere, le Sñr poit auer ſeũall br̃es des cuſtomes et ſeruices, pur cheſcũ Countie vn br̃e, et auer̄ eux

eux returnable a vn iour in le Common banke, et donꝫs de counter ſur eux come ſon caſe eſt, quia alitèr curia Regis deficeret conquerentibus in iuſtitia perquirenda: et oue ceo accord̃ F.N.B.151.b.et 30.E.1.tit̃ Droit pl.vltimo. Et ceo eſt bone example pro quolibet cõſimili caſu &c. ſimili indigente remedio. Vide 12.E.1.tit̃ Attaint 71. fort bone caſe: & le reaſon et rule del liure in 21.E.3.fo.18. eſt deſtre obſerue, ou le caſe fuit, que fine fuit leuie dun Mannor in vn countie, et le tenancie giſt in auter countie; ore ou le p̃ q̃ ſeruitia, ſerra port fuit le queſtion: et fuit adiudge, q̃ ceo fuit bñ port in le count ou le Mannor fuit: Car la Stone pronounce le rule del Court in ceux parolx, il ne poit nul auk̃ br̃e auer, car il couient, q̃ ſon br̃ ſoit accordant a le fine, & port in le Countie ou le note eſt leuie. Vide 11.R.2. tit̃ Action ſur le caſe 36. 7.H.4.8. Vide 26.H.6.tit̃ Couenant 9. 41.Aſſ.pl.12. 9.H.5.6. 22.H.6.5. Et in le principall caſe, ou fuit obiect que le dit Cap̃ Vtlagat̃ fuit erronious, car ceo fuit proxim̃ ante feſtum &c. ou ſerr̃ poſt feſtum &c. le Court ne priſt aſcun regard a ceo, car le error in le br̃e que le def. meſme ad torcionſlmẽt purſue ne donera aduantage a luy meſme: mes intant que il fuit impriſon et moleſt per ceo, ceo done cauſe daction al pl̃. Iury le Court ne reſpect le clauſe que le def. al m̃. in com̃ Norff. &c. malitioſè & deceptiuè machinatus fuit &c. Car ceo eſt cy ſecret et cy incertaine q̃ ceo ne poit eſtre trie.

Hill'

Hill' 27. Eliz. Reg. in Scaccario.

Sir Miles Corbets case.

Inter Sir Ed. Clere ⁊ Miles Corbet adonq̃s armig̃ ore chiual' fuit resolue in vn case concernãt le p̃sonage de Marham in le County de Norff. q̃ ou in le pays de Norff. la est vn special manner de common appel Shacke, q̃ est deste prise in t̃re arable, ap̃s haruest iesq̃ le t̃re soit seme arere ⁊c. ⁊ ceo commence in aũciẽt tẽps in cest maner. Lez camps de arable t̃re in cest pays consist de terres de mults et diuerz seueral p̃sonz gisants intermixt in mults ⁊ seũal petit p̃celz, issint q̃ nest possibl' q̃ ascũ de eux sans trñs al auts, poit pascer lour auers in lour t̃re demesne, ⁊ pur ceo chescũ de eux mitte eins lour auers a pascer p̃miscuè in le ouert campe, ceux p̃ols, daler Shack, sont tant a dire cõe daler a libertie, ou daler a large: in q̃ le policie dauncient tẽps est deste obs̃ue, q̃ le seuerance des campes in cy petit p̃cels a tants des seueral p̃sons, fuit dauoider inclosure et a mainteiner agriculture. Mes est deste obserue, que le dit common appel Shacke, que al commencement fuit forsq̃ in nature dũ feeding pur cause de vicinage pur auoiding de suit, in ascũ lieus deins cest pays est p̃ custome alter in nature dũ cõmon appenđ ou appurtenãt, et in ascũ lieus ceo retaine son original natur̃, ⁊ le rule de scaũ ceo est le custom̃ ⁊ vsage de chescũ seũal vill', ou lieu, car cõsuetudo loci est obseruãda; ⁊ pur ceo, si in le ville de Dale (exempli gratia) vn q̃ ad acquir̃ diũz p̃cels ensẽbl', in q̃ux lez Inhab. ont vse daũ Shacke, ⁊ long tẽpz paz ad inclose c̃, ⁊ niẽt obstãt toutz foitz ap̃z haruest lez inhab. ont ew shack la p̃ passag̃ in c̃ p̃ barres ou gates oue lour aũz, la c̃ s̃ra pris̃ cõe cõmõ appẽđ ou appurtenãt, ⁊ lown̄ ne poit exclud eux de cõmõ la, niẽt obstãt q̃ il ne voit cõmon̄ oue eux, mes a teñ sez p̃per t̃rez issint inclose in seũalty; ⁊ c̃ est bñ p̃ue p̃ le vsag̃, car niẽt obstãt launciẽt inclosur̃, lez inhab. ont ewe cõmõ la: mes si in le ville de S. le custome ⁊ vsage ont ẽe, q̃ chescũ own̄ in m̃ le ville ad inclose

lour

lour ꝑper terre de temps in temps, et illint ad teigne ceo in seue-raltie, la cest vsage ꝑue, q̃ ceo ne fuit forꝛsqꝛ in natuꝛ̃ del Shacke oꝛiginalm̃t pur cause de vicinage, et illint ceo continue; et pur ceo la il poit incloß ⁊ teigne ceo in seũaltie, ⁊ secluder luy mesm̃ dauer Shacke oue les auters: ⁊ com̃t q̃ in le dit case del ville de D. le vsage ad este, q̃ nient obstant le incloture ꝑ diuers Inhabitants de tardife tẽps, les auters Inhabitants ont ew shacke la, vncoꝛe si vn home ad auncient close dauncient temps ꝑise hoꝛs del campe, ⁊ il ⁊ toutz ceux q̃ estate il ad, ad teigne ceo toutz foits in seũaltie, il bien poit tener ceo inclose, car quant a tiel ꝑcel illint auncient m̃t inclose, le shacke la reteigne ẽ son auncient et oꝛiginal nature, ⁊ cesty q̃ claime Shacke la, ne poit ꝑscribe dauer common in ceo. Nota bone resolution, q̃ estoit oue reason, ⁊ nul inconuenience, innouation, ou cause de suits ou troubles sur ceo poit surder, mes quiet ⁊ repose serra per ceo in tiels cases establie, quel ieo pense digne destre repoꝛt, pur ceo q̃ est vn generall case in le dit pais: ⁊ al ꝑimes le Court fuit tout ouster-ment misconusant del nature de cest common appell' Shacke. Fuit auxy resolue a mesme le temps, que si les commons del vill' de A. ⁊ del ville de B. sont adiacent, et q̃ lun doit auer com-mon oue lauter ꝑ cause de vicinage, et deins le ville de A. sont 50. acres de common, ⁊ in le vill' de B. sont 100. acres de cõmon, in cest case les Inhabitants del ville de A. ne poient mitter plus-oꝛs auers in lour common de 50. acres que ceo poit depasture sans alcun respect al common deins le ville de B. nec econuerso: car le oꝛiginall cause de cest common ꝑ cause de vicinage, ne fuit pur ꝓfit, mes pur ꝑeuenting de suits in pais champian, pur recipꝛocal escapes de lun ville in lauter: et pur ceo si le common del ville de A. poit depasture 50. auers, et del ville de B. 100. auers, nest ꝑeiudice a lun ou lauter, si les auers de lun ville es-cape et depasture in le common del auter ville recipꝛocalment, car si toutz les auers depasture promiscuè insemble per my ⁊ per tout, ne serra alcun ꝑeiudice a lun ou lauter.

Cases

Cases sur lestatute de 13. E. 1. *de Wincheſter.*

LE puruiew del dit Act eſt, Que deſormes cheſcun pais ſerra iſſint garde, que maintenant apres Robberies & Felonies faits, ſoit fait freſh ſuit de ville in ville, & de pais in pais &c. et apres le felony ou robberie fait, le pais nauera pluis longe terme q̄ 40. iours, deins q̄r 40. iours couiendra q̄ ils facent gree de la robberie, ou del miſfait, ou q̄ ilz rēdront del corps des miſfeſors: ſur queux parolx diuers reſolutions ount eſte fait.

Triñ 27. Eliz.

TRiñ 27. Eliz. fuit tenus per totam Cur̄ in cōi banco, in vn caſe q̄ happa in Harleſton in le County de Suff. Que ſi hōe ſoit robbe in ſon meaſon, ſoit ceo in le iour, ou in le nuit, le Hundred in q̄ le meaſon eſt ne ſerē charge oue ceo: car cōm̄t q̄ le lē del dit act ſoit geñal, ſans pler daſcū lieu in ſpecial, vncore tiel robberie neſt pas deins le dit Act pur 3. reaſons. 1. Pur ceo q̄ le meaſon de cheſcū eſt ſon caſtle, & il doit garder & defender ceo a ſon peril, & ſi aſcun ſoit robbe in ſon meaſon, ſra arrette a ſon negligence & default demeſne. 2. Ne liſt al aſcun auter de enter in le meaſon daſcun pur le ſafegarder de ceo. 3. Tiel robberie, pur q̄ hundred rēdera p force del dit Act, couient eē apertm̄t fait, iſſint q̄ le pays poit p̄ndre notice de ceo de eux meſm̄ (car fuit adiudge in Aſhpoles caſe pchein enſuant, q̄ ne beſoign̄ daū aſcun hue & crie, ou notice fait al pais, neq̄r p le letter del dit act de 13. E. 1. neq̄r per le meaning de ceo, car poit eſte, q̄ le pty robbe fuit bound, ou maihem, &c. iſſint q̄ il ne poit faire hue & crie, ou doñ notice al pais) mez quant le robberie eſt ſecretm̄t fait in vn meaſon, ils ne poient prender notice de ceo. Sendils caſe.

Triñ 28 Eliz. in Cōi banco. Rot' 725.

INter Aſhpole & le Inhabitants de Euenger fuit reſolue per tout le Court, que coment que leſtatute eſt general, et ne fait mention daſcun temps, que le Robberie couient eſte fait in le Aſhpoles caſe.

le temps del iour, & hors del nuit: et la le case fuit, Que vn Robberie fuit fait in Januarie maintenant aps le coucher del soliel, durant day light, et fuit adiudge, que le Hundred respondera, pur ceo q̃ fuit temps conuenient pur homes a trauailer, ou destre entour lour oures, ou businesse: Et ouc ceo accord̃ le lieur in 3. E. 3. tit̃ Corone 293. que si vn occist auter al heure del vesper, et escape, p le common ley le ville serra amercie, car ceo est account en ley pcel del iour, & nemy del nuit.

Trin̄ 29. Eliz. in Communi banco, Rot' 1027.

Milbornes case.

IAter Milborne, & les Inhabitants del Hundred de Dunmow in Essex, fuit adiudge, que pur Robberie fait in le matine ante lucem, le Hundred ne serra charge, pur ceo que le Robberie fuit fait in le nuit: et coment q̃ nul temps soit specifie in lestatute, vncore p bone exposition ceo nextend̃ al robberie fait in le nuit, car nul laches ou negligence poit este arrect al Hundred pur default de bone garder de pais in le nuit, auxy in le nuit ils ne poīt faire pursuit aps les offendors, ou inquirie pur eux, et donq̃s a charger eux quant ils sont deprive de lour conuenient meanes, serra fort dure. Et (come ad este souent foits dit aylors) est bone exposition dun statute a expounder ceo solonqz le reason del common ley; Et al common ley, si vn soit occist in vn ville p le iour, cestascauoir, cy longe come la est pleine daylight, & cesty que luy occist escape, le ville ou cest felonie fuit fait serra amercie pur ceo: et illint est tenus in 21. E. 3. tit̃ Corone 238. Cum quis felonicè occisus fuit p diem, nisi felo captus fuit, tota villata illa oneretur: et ouc ceo auxy accord̃ le dit lieur in 3. E. 3. Mes si tiel murder ou homicide fuit fait in le nuit, le vill̃ ne serra amercie p le common ley, pur ceo que (come ad estre dit) nul laches ou negligence poit este arrect al Inhabitants del ville: & Dieu ad ordeine le iour pur homes a labourer, trauailer, et a faire lour besoignes, & le nuit a prender lour rest & repose; et pur ceo le Prophet dit, Posuisti tenebras, & facta est nox, in qua pertranseunt bestiæ siluæ &c. sol oritur & congregat̃ sunt, exit homo ad opus & operationem, & redit vespere: illint sauage beasts passont & repassont in le nuit, et adonques homes ont lour repose, & in le iour homes applient eux meim̃ a lour labors & affaires. et donq̃s les dits beasts retire eux meim̃ a lour dennes. Et le Poet dit,

Psal. 104.

Vt iugulent homines surgunt de nocte latrones.

Et

Et le cõmon ley est, homes ne poient distreine pur rent ou seruice in le nuit, cõe est adiudg̃ in 12. E. 3. tit̃ Distres 17. & 11. H. 7. 5. accord̃, mes pur damage felant il poit distreine in le nuit, pur le necessitie del case, car autrem̃t paduẽture il ne distreinet̃ omnino, car deuãt le iour ils poient este prise, ou estray hors de son terre: et oue ceo accord̃ 10. E. 3. fol. 21. Est ouster puruiew per le dit act de Wintoñ, q̃ in Cities ou graund villes, q̃ sont inclose, les ports doient este firme del soliel couchant iesq̃ al soliel leuant; puis quel statute, si in tiel Citie ou ville inclose ascun murdre ou manslaughter soit fait in le iour ou in le nuite, & le offendor escape, tiel Citie ou ville ſra amercie: car ore lact ad change le reason del ley, & p ceo le ley mesm̃ est chaunge, car, Ratio legis est anima legis, & mutata legis ratione, mutatur & Lex; car al cõmon ley, si home fuit occise in le nuite, cõe ad este dit, la ne fuit ascun defaut in le Citie ou ville, mes ore sils ne gardont lour ports firme solonq̃ lestatut, p q̃ le offendor escape, donq̃s est default et negligence in eux, & oue ceo accord̃ le liure in 3. E. 3. tit̃ Corone 299. ou le case est, plent̃ fuit, q̃ vn occide auter in le nuite, & demaund̃ fuit ou le felon fuit, & ils disoient q̃ il est fue, & pur ceo q̃ il fuit in le nuite il ne doit este charge. Lowther Justic̃, q̃ done le rule, dit le ville serra firm̃ p lestatut de cel heure, & pur ceo q̃ les villours de la ville ne luy prist point, tout le ville fuit in le mercy. Auxy fuit tenus sur le dit act de 13. E. 1. q̃ si diũs cõmit vn Robery, ceux del hũdred couiẽt apphend̃ touts le felõs, car com̃t q̃ ils apprehendont ascun de eux ceo, ne sufficet̃ dexcuser eux: car les polx del act de 13. E. 1. sont, q̃ ils respond̃ pur le corps de les offendors q̃ in cõstruc̃ fuit prise touts les offendors. Mes ore p le statute de 27. Eliz. cap. 13. nouel ley est fait int̃ auts in ceux points ensuants. ¶ 1. Que nul aĩa acc̃ sur le dit statute, sinon q̃ le ptie robbe cy tost cõe il poit donet̃ notice del dit felonie al ascũ des inhabitants dascũ ville, villages, ou hamlet, prein al lieu ou le robberie fuit fait. ¶ 2. Sils in lour pursuit apprehend ascũ des offendors, ceo eux excuset̃, coment q̃ ils ne prendront touts. Vide le dit act de 27. Eliz. que auoit adde al dit act de Wintoñ, et alter ceo in diuers points.

Mich' 28. & 29. Eliz.

Le Countee de Bedfords case.

IN le Court de Gards le case fuit; q̃ Frauncis Countee de Bedf. esteãt seisie de certain meales in le Strond in le coũty de Midd̃ in taile, s̃. a luy et a les heires de son corps (et seisie dauters terres in fee tenus in capite) p̃ fait indent, fist leases de m̃ les meales dõt il fuit seisie in taile pur 21. ans, rend̃ rent (queux leases ne fueront garrant p̃ lestatute de 32. H. 8. mes fuer̃ voidable per les issues in taile) & mozust, le reuersion discend̃ a les heirs general del dit Countee, cestalscauoir, a deux files et heires del Henry Seignioz Russell, eygne fits del dit Countee, (que Henry mozust in le vie son pier) & appiert que les dits leases fuer̃ dauer continuance aps̃ q̃ les dits files serr̃ hozs de gard: et per office, puis le mozt del dit Countee, fuit troue, q̃ il mozust seisie del dit estate taile des dits meales, et q̃ eux discend̃ al dits heires general; p̃ force de q̃ les meales fuer̃ seisie in le maines le Roigne. Et in cest case 2. points fuer̃ resolue. ¶ 1. Que le Roy in p̃iuitie et droit des heirz in taile auoidra les dits leases durãt le tẽpz q̃ ils ss̃ in gard̃: cõe si eueskz fait lease pur ans nient garrãt p̃ le dit statute, issint q̃ le lease est voidabl̃ p̃ le succell. & mozust, le Roy auoid̃ le leas, durãt le vacac̃ del eueskz, in p̃uity & dõt del eueskry, car le Roy in nul des dits cases est cõe vn estraũg. Et m̃ la ley est, q̃n vn subiect est gardein in chiualr̃, il in le dõt del hr̃e, deins age et in son gard̃, auoidr̃ voidable leasez, q̃n a son interest demesn̄; mes ceo ne p̃iudicer̃ le hr̃e de son election al pleine age, car Custos statũ hered̃ in custodia sua existentis, meliorẽ non deteriorẽ facere potest. Issint, si le heire deins age deuãt lentr̃ del gardein, ou la ũcester, esteant deins age, fait leas pur ans rend̃ rẽt, le gardein poit enter in le dõt del heire, & auoidr̃ le leas. Mes sn̄ioz p̃ escheat ne auoidr̃ voidable estates fait p̃ son tenãt q̃ fuit enfant; car regularm̃t, nul auoidera voidable estates pur cause de infancy, sinon

lenfant

lenfant meſñ, ou ſez heires, mez le gardein auoidꝫ ſez dits voida-
ble leaſes in droit del infant meſñ, & iſſint diuſitie: & le Roy in le
caſe del Eueſqz, auoidꝫ le leaſe, in droit del eueſqrie, q̃ ad continu-
ance coñt q̃ le eueſqz ſoit mozt. Et ceo fuit vn des points adiudg̃
in Leſchequer in le grand caſe int Auſtine & Sir John Baker an̄
2. Marię, q̃l ieo ay vieu, et q̃ ſerr̄ relate pluis alarge in le reſolution
del 2. point de ceſt caſe. Vide 16. Eliz. 337. Dier, patentee del Roigne
Eliz. des tres dõe al ꝑſon, & ſes ſucceſſozs a ſupſticious vſes auoi-
dra aps ſon mozt leaſe pur vie (q̃ eſt voidable ꝑ le ſucceſſoz) fait ꝑ
le ꝑſon, ꝑ le intention del ſtatute de 1. E. 6. de chaunteries. Vide 7.
Eliz. Dier 239. Hoskins caſe. ¶ 2. Fuit reſolue, q̃ coñt q̃ le Roy in
droit del heire ad auoide ceo pur ſon temps, vncoz ceo ne auoide
les leaſes, cy abſolemẽt q̃ les heires in taile aps lentereſt le Roy
determine ne poiẽt faire eux bone ꝑ lacceptance del rent: car lact
le Roy ne poit determine le election & power des iſſues in taile, ou
del ſucceſſoz del eueſqz in le caſe mis deuãt, a faire ſez leaſes bon ꝑ
lacceptance del rent. Et quãt voidable leaſes, ẽant void pur vn
temps, ſerra touts foits auoid, & quant nemy, ceſt diuerſitie fuit
pziſe et reſolue ꝑ le Court, ſ. quant lentereſt de ceſty q̃ fait lauoi-
dance eſt foꝛſqz pur part del terme, iſſint q̃ appiert que vn reſidue
remaine; et quant ceſty q̃ fait lauoidance auoid tout lentereſt iſ-
ſint q̃ appiert q̃ nul reſidue poit remaine: et pur ceo in le caſe al
barre appiert aps lentereſt le Roy determine, la remaine vn reſi-
due del terme: Mes ſi le patron del eſgliſe de D. graunt le pzo-
chein auoidance al auꝫ, et puis & deuant leſtatute de 13. le Roigne
Eliz. le ꝑſon, patron, et oꝛdinarie font leaſe pur ans rend̄ rent, et
le ꝑſon mozuſt, le grauntee p̃ſent, q̃ eſt admit, inſtitute, & induct, &
mozuſt, ceſt leaſe fuit auoid in tout abſoluteñt; & pur ceo tiel leaſe
ne poit eſtoier vers le 2. ſucceſſoz. 2. E. 3. 8. ſi aduowſon dun eſgliſe
per licence ſoit graunt al vn pzioꝛ & ſes ſucceſſozs, et puis meſme
leſgliſe eſt appzopzie a luy et ſes ſucceſſozs, iſſint que ils ſont per-
petuell parſons in parſonee; in ceſt caſe ſi la feme del grauntoꝛ
ſoit indowe del aduowſon et pzeſent vn Clarke, que eſt admit,
inſtitute, et induct, lappzopziation eſt defeat a touts iours, car
lentier eſtate del parſon in parſonee eſt auoide, et iſſint fuit ad-
iudge come Sir Jeffery Scrope repoꝛt in 2. E. 3. fol. 8. et in tiel
ſence eſt le liure deſtre intend. Car coment que la feme fuit in-
dowe del aduowſon, vncoz ſi el vſt denie deuant que aſcun fuit
admit, et inſtitute a meſme leſgliſe a ſon pzeſentation, leſgliſe re-
mainera appzpziate: & iſſint vn Quære in 6. E. 6. fol. 7. 2. Dier eſt bi-
en reſolue. Iſſint, ſi feme couert (come feme ſole) leuie fine a per-
luy de terre dont el eſt ſeiſie in fee a vn auter et ſes heires; in ceſt

case si le baron ne enter, ceſt fine liera la feme et ſes heires a touts iours, et in meſme le case si le baron enter et mozust, le conusee nauera la terre: car per lentrie del baron, lentier estate del conusee fuit defeat, et launcient estate la feme reuestue in luy, et le baron seisie del entier estate come in dzoit sa feme: et oue ceo accozd 17. E. 3. 52. 17. Ass. pla. 17. 7. H. 4. 23. 2. Rich. 3. 20. 9. H. 6. 33. Mes quant sozsque part del estate ou terme est defeate, la est autrement, come in le dit case inter Austine et Sir John Baker fuit adiudge, quel case, come ieo meſme ay veie, in effect fuit. Sir Thomas Wyat fuit tenant in taile del mannoz de Estfarleighe in le Countie de Kent, videlicet, a luy, et a les heires males son cozps, del done le Roy H. 8. a tener de luy in Capite, le reuersion al Roy, ses heires, et successozs. Sir Thomas Wyat, per Indenture demise le dit mannoz al Austine, pur 26. ans, rendant 13. l. rent, al dit Sir Thomas et ses heires, et puis Sir Thomas Wyat mozust, et tout ceo fuit troue per office, et q̃ Sir Thomas Wyat fuit son fits et heire male de pleine age, per que le Roy ad p̃mer seisin del terre meſme, et pur son interest auoide le lease, et puis Sir Thomas le fits suist liuerie, et accept le rent del Austine, et puis commit haut Treason, pur que il fuist Attaint: in ceſt case fuit adiudge, que intant que le Roy ad auoid le lease sozsque quant a son p̃mer seisin, que apres liuerie fait, est in le election et power del issue in taile, per lacceptance del rent, daffirmer le lease, pur ceo que le lease fuit auoide per le Roy sozsque pur part del terme. Jsſint si tenaunt in taile p̃ist feme, et fait lease pur 30. ou 40. &c. ans, rendant rent, que est voidable per le heire in taile, et mozust, et puis le feme recouer sa dower, in ceſt case le feme auoydera le lease, et vncoze, si el mozust deins le terme, lissue in taile poit a son election ou affirmer ou disaffirmer le lease. Et fuit dit, si tenant in taile fait lease pur 30. ou 40. ans, rendant rent, quel est auoydable per lissue in taile, et puys tenaunt in taile mozust sauns issue, son feme p̃iuement inseint, ouc vn fitz, per que le donour enter, et quant a luy auoyde le lease, et puys le fitz est nee, le lessee reenter, le fitz a son pleine age poit per acceptance del rent affirme le lease; car le lease ne fuit vnques auoyde absolutement, ne simplicitèr, mes secundum quid, et sur le matter ex post facto fuit defeate sozsque pur temps: Et coment que filius in vtero matris, est pars viscerum matris (Vide 3. Assis. pla. 2. 22. Assis. pla. 94. 22. Edwardi tertij, tit Corone 180. Stamford fol. 21.) vncoze le ley in mults cases ad consideration de luy in respect del apparent expectation de son

nestre,

nestre, vide lopinion de Saunders & Browne in Stowels case, P.com.fol. pur auoyding dun fine, vide temps E. 1. tit Gard 153. & 31. E. 1. tit Briefe 873. pur le gard luy. Vide 38. E. 3. 7. & 41. E. 3. & 11. E. 3. tit Voucher que il serra vouche in ventre sa mere, 11. H. 6. 13. deuise de terre (deusable p custome) a vn in ventre sa mere, 41. Ed. 3. deteynūt des chēes pur le heire in ventre sa mier, 3. Eliz. Dier 186. adulter councel la fem de murder lenfant quant est nee, q̄ fait accord, ladulter est accessarie, vncore al temps del councell lenfant fuit in ventre sa mere. Mes fuit dit, si tenāt in taile fist lease pur 30. ou 40. ans, rend rent, & puis p̄ist fem, & morust sans issue, sa fem p̄iuem̄t enseint oue fitz, & puis la fem recouer dower del dit terre, el deuant le nestre del fitz nauoidera le lease, car son estate est quodam modo vn continuance del part del estate taile, & ceo est pue p 10. E. 3. 26. 34. Ass. p. 15. & 23. E. 3. Dower 130. q̄ il serr̄ attēdant del 3. pt de seruices q̄ tenant in taile seoit, les queux el ne serr̄ si a touts purposes lestate taile fuit tout ouster̄m̄t extinct, & tenant in dower est eins in le Per. p son baron et eins de son estate. Vid' Litt̄ 93. b. in Discents. 38. Ass. 26. 7. H. 5. 3. 8. E. 2. Entre 75. &c. Vide Dier 33. H. 8. fol. 51. b. tenant in taile deuant lestatute de 27. H. 8. de vses fist feoffem̄t in fee al vse de luy & ses heires, & auxi, deuant le dit act, il et ses feoffees font lease pur ans, rend rent, & puis lestatute il morust, le terre discend a son issue, q̄ deuant entrie sur le termor leuy fine al auter: & p le melior opinion des Justices dambideux banks p̄ter Saunders lalienee ne ceo auoidera; car coment q̄ le fitz fuit remitt vncore le lease ne fuit merem̄t void sans actuell entrie p̄ issue. Vide Pl. com. 437.

Trin 33. Elizabeth. in Communi *Banco.*

Vghtreds case.

HEnrie Vghtred armiger port briefe de annuitie vers Will marques de Wincheſter fitz & heire de John marques de Wincheſter, & counta coment le dit John marques de Winch' 20. die Decemb' an 17. Eliz. tam pro bona & fauorabili affectione & beneuolentia quas geſſit erga eundem Henricum, quam pro confidentia & fidelitate poſit in eodem Henrico, p ſon eſcript conſtitute et authorize le dit Henry deſtre capitaine del fort ou bulwarke et caſtle de Netley alias Letley in comitat Southampt, a auer et exerciſer le dit office del capitaine &c. durant le vie del dit Henrie, & donoit a luy authoritie durant ſon vie a nominater & appointer de temps in temps vn maſter gunner, vn porter, & 6. ſouldiers &c. Et ouſter, p meſne leſcript, le dit John marques granta, pro conſideratione predicta, & pro meliore manutentione ipſius Henrici & magiſtri tormentor, & ſex militum in defenſione & tuitione caſtri predicti, pur luy et ſes heires al dit Henry, durant ſon vie vn annuity de 32. l' al feaſts de S. Michael & lānunciation de noſtre Dame p equall portions: p force de quel il fuit ſeiſie del dit office et del dit annuitie pur ſon vie: et puis 10. Nouembr an 18. Eliz. le dit John marques mort, & le defend, ſon fitz & heire, le dit annuitie, p 11. ans deuant le briefe purchaſe, ſubtrahe, q in tout amount a 368. l' &c. Sur quel count le defend demurr in ley, & ſolongz leſtatute mꝛe diuers cauſes: 1. pur ceo q nappiert per le count que le dit John ſeignior marques ad power ou intereſt a graunter le dit office, et auxi pur ceo que le pl nad auerre q il ad exerciſe le dit office, ne q il appoint vn maſter gunner, porter, ou les ſouldiers, & diuers auters cauſes fuer mꝛe: mes hijs non obſtantibus iudgm fuit done per les Juſtices del Common banke pur le pl. Sur q le seignior marques port briefe

briefe de Error, & diuers errors fuer assigne; mes toutz fuer ouerrule p le court forsq vn, et ceo fuit q̃ le pl̃ in le briefe de annuitie nad auerre in son count, q̃ il auoit exercise le dit office &c. mes apres plusors arguments et consideration de touts les liures, in queux (come semble prima facie) est diuersity des opinõs, fuit resolue, q̃ le count fuit bone sans tiel auerm̃t. Et lour reason fuit, q̃ in touts cases quant vn interest ou estate commence sur condition p̃cedent, soit le condition ou act destre performe p le pl̃ ou defend̃ ou p ascun auter, et soit le condition in laffirmatiue ou negatiue, la le pl̃ couient a mẽ ceo in son count et auerre le performaunce de ceo; car la lenterest ou lestate commence in luy per le pformaunce del condition, & nest in luy tanq̃ le condition soit pformé: mes auterm̃t est quant le interest ou estate passe maintenaunt et vest in le grantee, & est destre defeat p matter ex post facto, ou condition subsequẽt, soit le condition ou act destre pformé p le pl̃ ou defend̃ ou p ascun auter, & soit le condition in laffirmatiue ou negatiue, la le pl̃ poet counter generalm̃t sans mẽans del pformaunce de ceo, & ceo serra plead per cestuy q̃ voet prender aduantage del condition ou matter ex post facto, car chescun doit alledge ceo que fait pur luy, & q̃ est pur sou auaile, et nul serr̃ chase dalledger ceo que fait in conl̃ luy. Et bien poet estre q̃ le condition subsequent, ou matter ex post facto, estoit sur multz partz (come in le case al barre ceo happa) queux touts a reherser serra tedious, quant issue ne serra prise forsq̃ sur vn de eux, et le def. poet pleader quel vn de eux il pleist in barre del action; et issint le pleadmg serra pluis briefe et compendious, q̃ est le pluis cõmendable, si ceo soit sufficient. Icy in le case al barre le condition fuit destre performe per le pl̃ mesme, & pur ceo le case est pluis fort, mes pur ceo q̃ le pl̃, per le dit graunt, fuit maintenant seisie del office et del annuitie pur terme de son vie, le quel couiẽt destre defeat per le non vser del office ou auter matter subsequent, le matter subsequent fait enconter luy, et pur ceo serra plead per le defend̃: et oue ceo accord̃ 15. H. 7. fol. 1. in briefe de annuitie vers successor dun prior, sur graunt fait per son predecessor tanq̃ il fuit aduaunce a vn benefice de S. esglise, et le pl̃ count generalm̃t, sauns dire, q̃ il est vncore aduaunce: & exception fuit prise a ceo pur tiel cause, & nient obstant le coũt agard bone, pur ceo q̃ le condition va in defeasauns del annuitie, le quel viendra del part del defend̃ destre mẽ: auxi, ceo est annuitie q̃ commence auant q̃ le condition serra performe le quel performance viendra del part del grantor, & nient semble ou le condition fuit, q̃ si le grantee face tiel act q̃ donques il auera tiel annuitie, ore sil voet demaund

ceo,

ceo, il couient alledger in fait q̄ le condition est perfoꝛme, car per le perfoꝛmaunce de ceo lannuitie commence: & illint diuersitie p omnes lusticiarios, & ceux sont les poꝛx del liure. Illint est dit in Colthirsts case Pl.com.25.b. si ieo grant a vn q̄ quant il serra pꝛomote a vn benefice, q̄ il aueꝭ annuty, sil demaund annuitie il doit pꝛimes mꝛe que il est ꝑmote a vn benefice: mes si lannuitie soit grant a vn tanque il soit pꝛomote a vn benefice la il auera bꝛiefe de annuitie, & ne mꝛe q̄ vncoꝛe il nest pꝛomote, pur ceo q̄ lannuitie pꝛecead, & le pꝛomotion est subsequent, & va in defeasaunce del annuitie; & pur ceo doit estre mꝛe del contrarie part. Mes quant home nest pas intitle foꝛsq̄ a vn action, & cest action ne gist sinon le condition ou consideration soit perfoꝛme, la le pl̄ in son count doit mꝛe le perfoꝛmance; car ceo amount a vn condition pꝛecedent, pur ceo que laction commence sur le condition ou consideration perfoꝛme, come le liure est in 3.H.6.33.b. Mittomus que ieo retaine vn hõe dal̄ oue moy al Rome p̄ 40.s̄, icy, per le aler commence pꝛimerm̄t le cause del dutie, in quel case sil poꝛt bꝛiefe de det de cel, in son coūt il couiēt declare q̄ il fuit la, ou autrm̄t le count abatera. Illint est, si ieo retaine vn de seruer moy pur 40.s̄ per annum; car icy per le consideration perfoꝛme cõmence le dutie, illint que ceo est in nature dun act pꝛecedent: & sic fuit lopinion de tout le court in le dit liure. Mes le case in 48.E.3.3.&4. fuit affirme pur bone ley, ou appiert q̄ indentures fueꝭ faitz int̄ Sir Rafe Poole chiliē de lun part, & Sir Rich. Colcelser del auter part, per queux Sir Rafe couenant oue Sir Rich. de seruer luy oue; esquiers des armes in la guerre de Fraunce, & Sir Rich. couenant pur ceo a paier a luy 42. marks: in cest case chescun partie ad owell remedie, lun pur le seruice, & lauter pur les deniers, & pur ceo, in det pur les 42. marks, il poet eslier de counter in generall ou in especiall, a sa volunt, per le rule del court. Auxi quant vn interest passe maintenant et est destre defeat per matter ex post facto, vncoꝛe sil appiert al court per matter in ley, que laction ne serra mainteinable sans mēs del perfoꝛmance del condition ou cōsideration, la le pl̄ couient dauerrer ceo pur maintenance de son action; come in 39.H.6.21.22. le case fuit, R. abbot de Chester grant a John Bꝛewin al̄ per son fait (sans le consent del couent) vn annuel rent de 40. s̄ hoꝛs de son monasterie pro cōsilio suo eidem R. abbati & conuentui eiusdem loci impenso, & imposterum impendend': le dit R. abbot moꝛust, & John Bꝛewin poꝛt bꝛiefe dannuitie vers le successoꝛ, & auerre, q̄ il auer done al dit R. nup̄ abbati & conuentui consilium suum, apud W. in negotijs domus p̄dict̄ agendis, ad proficuum eiusdem domus: & Prisot & tout le court

Court tient, q̃ laction ne fuit maintenabl̃ vers le successor sans tiel auerrem̃t; car laction nest maintenable vs le successor, de nul contract ou graunt fait p Labbot solemẽt sans le Couent, sinon q̃ le effect ou consideration de ceo vient al p̃fit del mealson; et que tiel geñal auerremẽt fuit bone, car serr̃ trope longe a mẽe touts les causes spialm̃t, et pur ceo vs le successor il doit p̃nder tiel auerrement: Mes in action vers Labbot mesm̃, q̃ fist le graunt, ne besoigne de p̃nder tiel auerrem̃t, come est agree la per tout le Court. Et illint p ceux diuꝛsities, 1. Inter interest ou estate vest, & q̃ est destre deueste p condition ou matt̃ subsequent, & condition ou matter q̃ p̃cede lestate ou le interest, 2. Inter chose in action q̃ in iudgem̃t del ley est a commencer sur condition ou consideration p̃cedent, & interests ou estates que cõmence maintenant. 3. Quant owel remedie est done al ambideux, p recipꝛocal couenants. 4. Quant p matter apparent laction le pl̃ ne serr̃ mainteine sans aũrement, com̃t que soit in case dun estate ou interest veste, vous mieulx entendꝛes vẽe liures, q̃ semblont prima facie a discorder. 21.E.4.49. 22.E.4.43. 9.E.4.20. 37.H.6.8. 36.H.6.2. Dier 10 Eliz. 270. in Auowrie, & 15.Eliz.329. in Dette.

Et nota, le dit Vghtred ad iudgem̃t in le common Bank, Quod p̃dictus Henricus recuperet versus p̃fatũ nunc Marchionem, annuum redditũ p̃dictũ & arreragia eiusdem, tam diu ante diem impetrationis br̃is original̃ ipius Henrici, quam postea incursa, & damna sua occasione subtractionis annui redditus p̃dict̃ ad decem libras, eidem Henrico ex assensu suo per Curiam hic adiudicat̃: Que quidem arreragia & damna in toto se attingunt ad 402. lib̃. Et p̃dictus nunc Marchio in misericordia.

Mich̃

Mich. 33. & 34. Eliz. in Scaccario.

Englefields caſe.

INter le Roygne, & Margaret Engleſield, Fraunces Engleſield, & auters, in Inforꝛmation ſur intruſion in Leſchequer, q̃ cõmence Tr̃ 32. Eliz. le caſe fuit tiel in effect. Sir Fraũces Engleſield ſeiſie del manoꝛ de Engleſield in Coñ Berk. in fee, per Indentur̃ dated 2. Ianuarij, añ 18. Eliz. inter luy & le dit Fraunces ſon Nephew, couenant pur aduanceñt de ſon ſanke &c. a eſtoier ſeĩ al vſe de luy meſñ pur vie, et puis al vſe de ſon dit nephew, & les hr̃es males de ſon coꝛpꝰ, et puis al vſe de dꝛoit hr̃es del nephew: Et fuit ouſter conteine in le dit Indẽture, q̃ pur ceo q̃ ſon nephew fuit Infant, iſſint q̃ ſon pꝛoofe ne adonq̃s fuit view, & pur ceo le vncle ne penſa conueniẽt a ſetler le dit inheritance en le nephew abſoluteñt, cy longment come le vncle viueroit, ſans frene pur reſtrainer luy, ſi aꝑs il ꝑra ꝓdigal, ou ſerra done al intollerable vices; a ceſt cauſe fuit ꝓuide, q̃ ſi le vncle ꝑ luy meſñ, ou ꝑ aſcun auter, durant ſon natural vie, deliuer, ou offer al nephew, vn annule del oꝛe, al intent de faire void les vſes, que donq̃s toutz les vſes ſerr̃ voide. Hilꝰ 26. Eliz. Sir Fraunces fuit indict in bank le Roy, ꝑ enq̃ſt de Mid̃, pur Treaſon fait al Nemures in Hanonia in ꝓtibus tranſmarinis, 20. Octob. 18. Eliz. ſur q̃l indictñt il fuit vtlage: et puis 8. Auguſti, 28. Eliz. le Roign̄, ꝑ patent deſouth le graund ſeale, leſſa le terr̃ al Foſter & Fitton, deux de les def. pur 40. ans, & auxy demiſa al eux pur 40. ans, omnes & ſingulos boſcos, ſubboſcos, arbores, & terras boſcales: et puis al pliamẽt 29. Oct. añ 28. Eliz. lattaindr̃ fuit confirme; & ouſtr̃ fuit enact, q̃ il ſerr̃ attaint de hault Treaſon, & foꝛfeiter̃ al Roigne touts ſes manoꝛs, terres, tenemñts, &c. le iour de le treaſon cõmis, ou a aſcũ temps aꝑs, & q̃ ſra in actuel poſſeſſion le Roigne ſans office: Myes ouſtr̃ fuit puruiew, ꝑ m̃ le act, q̃ riens in ceo extenderoit a faire void aſcun leas de terre, ou done de biẽs, fait ꝑ le Roign̄ ſouth le graund ſeale, ou Leſchequer ſeale, puis le treaſon fait &c. Et a m̃ le pliament vn auꝫ act fuit fait, per q̃ fuit enact, That euery perſon and perſons, which hath, or claimeth to haue any eſtate or intereſt, of, in, or out of any land of any of the perſons attainted ſince 18. Eliz. not inrol-

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led of record, nor certified into the Exchequer, made ſince 1. Eliz. by any of the perſons attainted ſince 18. Eliz. of Treaſon, for conſpiring of the Queenes death (come le dit treaſon de Sir Fr. Engleſield fuit) within two yeares after the laſt day of this Seſſion of parliament, ſhall openly ſhew, and bring foorth, into the Queenes Maieſties Court of Exchequer, the ſame, his, or their graunt, conueiance, and aſſurance, and there in the Terme time, in open Court, the ſame ſhall offer and exhibit, or vpon his, or their oath, affirming that they haue not the ſame, nor can come by it, or that it was neuer put in writing, then the effect thereof to be entred and inrolled of record, Or elſe euery ſuch conueiance and aſſurance ſhould be void and of none effect to all intents and purpoſes: Sauing to euery perſon and perſons (other then parties and priuies to ſuch conueiance, and ſuch as ſhall not exhibit the ſaid conueiance according to the true meaning of this Act) all ſuch right, &c.) Et puis 17. Martij, 31. Eliz. le Roign, per ſes lres patents deſouth le graund ſeale, recitant les vſes, & le puiſo del tendering dun anule, & q̃ le benefit & aduantage del dit condition eſt done a luy p lez ſtatutes de ceſt Realm, depute, authorize, & in ſon lieu & perſon ad mis Rich. Broughton & Henry Bouchier iointm̃t & ſeueralm̃et, pur deliuer ou offer le anule de oze al Engleſield le Nephew, al intent de faire void les vſes in lendentures, & q̃ ils certifier̃ in Leſchequer ceo q̃ ils fairont in les p̃mulles. Broughton & Bouchier 18. Martij, añ 31. offer le anule (& lie a luy le Patent) al dit Fraunces le nephew, quel il refuſa; tout q̃l fact oue le patent ils certifiont in Leſchequer 19. Martij 31. Et le vie de Sir Fraunces fuit auerre &c. Et les def. fuer̃ charge pur Intruſion 20. Martij 31. Eliz. et oue le ſuccider de certein trees de elme & aſhe, & de certeine ſubboys. Et in ceſt caſe aps pluſoz argum̃ets al barre, et ſur ouert arguñt al bench, ceux points fuer̃ reſolue. 1. Le Roign fuit tenant pur auk vie, & fiſt leas pur 40. ans, coñt q̃ le Roigne (aiant foz ſoz eſtate pur auter vie) ne poit abſolutem̃t contracter pur leas pur 40. ans, vncoze ſans alcun recital on mention de eſtate pur vie, le leas eſt bone, car le leas pur ans eſt in iudgem̃t del ley meinder q̃ leas pur auter vie, & le Roigne ne fait alcũ toꝛt ou p̃iudice a alcũ p le demiſe, et neſt deceiue in ſon graunt; car in iudgem̃t del ley, ceo eſt leas pur 40. ans, ſi ceſty q̃ vie cy longem̃et viuera: Mes ſi le Roigne vſt graunt greinder eſtate que el loyalm̃t poit, come eſtate in taile, ou in fee, la pur ceo q̃ el ne poit loialm̃t ceo faire el fuit deceiue, & p conſequẽs ſon graunt void. Vide oze le caſe de Alton Woods, in le primer part de mes Reports. Et fuit dit, q̃ ſi le Roign grant totũ ſtatũ ſuũ (ayant term̃ ou eſtate pur vie, extent, ou auter pticuler eſtate) q̃ ceo eſt aſſets bone, car le

Roigne

Roigne ne graunt pluis q̃ el poit p la ley, ne fait aſcun tort ou alteration daſcũ eſtate p ſa graunt. Et fuit obiect, que ceſt condition ne ſerra done al Roigne p leſtatute de 33.H.8.cap. 20. et ceo pur 3. reaſons. ¶ 1. Ceſt condition eſt annexe al Sir Fraunces, oue tiel inſepable pꝛiuitie, q̃ ne poit eſte done al auter: car in ceſt caſe le ſubſtance del cõdition eſt le entent ⁊ ment de Sir Fr. mes pur ceo q̃ ſon entent ⁊ ment ne poit appearer ſans ouert act, a ceſt cauſe le anule ſerr̃ tender, come declaration de ſon entent, q̃ fuit inward ⁊ ſecret a luy meſme; iſſint q̃ le tẽder del anule neſt forſqꝫ le outward ceremonie, mes le ſubſtance del condition eſt le ment ⁊ volunt de Sir Fraunces, que ne poit eſte tranſferr̃ al auter. Auxy in ceſt caſe nature eſt fait Judge, car le vncle eſt daiudger del qualitie ⁊ diſpoſition del nephewe, et le q̃l il done cauſe a ſon vncle a reuoker ⁊ diſanuller ſon eſtate, ⁊ pur ceo, ſicome natural amour ⁊ affection ne poit eẽ tranſferre al auter, iſſint ceſt conueiance, de q̃l natural amour ⁊ affection eſt le cauſe de creater de ceo, et le judge del determination de ceo, ne poit eſte reuoke ou determine p aſcun auter, ⁊ tout ceo accorꝺ̃ oue le reaſon del common ley; Car le garde del eigne fitz, q̃ le ley de natuꝛ done al pier, eſt inſepable, ⁊ ne poit eſte forfeit ne tranſferre al auter, come eſt agree in 33.H.6 et homage auncеſtrel eſt inſeparabl̃, pur ceo que ceo eſt annexe al ſanke del ſ̃nior ⁊ del tenant. ¶ 2. Per geñal parolꝛ del dit act de 33. H.8. conditions ſepable, ⁊ q̃ poyent eſte pforme per auters, ⁊ nemy inſeperable, ſont done al Roy, come appiert per diuſ̃ caſes foundus ſur geñal acts de pliaments icy mis, et agree aps. ¶ 3. Fuit obiect, Que ceo eſteant vn collateral condic̃, com̃t q̃ le cõdition ſoit done al Roy, ſ̃. le benefit de ceo, ſi ceo ſoit pforme, vncoꝛ le pforemance de ceo neſt pas done al Roy p le dit act; et pur ceo Sir Fr. couient tender le anule, ⁊ nemy le Roigne. Et pur ceo, poſito q̃ le condic̃ vſt eſtre, ſi le chiefe Juſtice Dengleſtre pur le tẽps eſteant, tendꝛa vn anule aꝑꝫ lattaindr̃ del Sir Fraunces, le Roigñ ne poit tender: et le reaſon de les liures in 12.H.4.2. & 9 H.7.17. & 20. 4.H.8. Dier 1. &c. fuit vꝛge, ou collateral conditiõs ne poiẽt eſtre alter, ⁊ auks choſes accept in ſatiſfaction de eux inter ſ̃ les pties; à fortiori icy, car icy le pſon q̃ per exp̃ſſe polꝛ doit pforemer le condic̃ ſꝛa chaunge. Quant al 1. ⁊ 2. obiections, *Manwood* chiefe Baron, & tout le Court teignont, que tout le foꝛce ⁊ effect del condic̃ in le caſe al barr̃ conſiſt ſur le tender del anule, et lauter matter del reaſon ⁊ cauſe, que moue et induce luy de layſer le dit power ⁊ frene in luy meſm̃, ne fuit aſcun pcel del pꝛouiſo, mes vn floꝛiſh, come il ceo terme, et pꝛeamble, et riens eſt parcel del condition, mes ceo que vyent apꝛes le

puiſo,

puiſo, & ceo eſt le tender del anule. Et quant a ceo, le dit diuerſitie fuit priſe, et agree per tout le Court, ſ. inter conditions que ſont perſonel, et individual, & ne poyent eſte perfoꝛme per aſcun auter, & conditions q̃ ne ſont cy inſeperablemẽt annexe al perſon, mes q̃ ils poyent eſte pfoꝛme per aſcun auter; come fuit reſolue, in le caſe de Thomas Duke de Norff. que in Anno 11. Eliz. conuey ſes terres al vſe de luy meſm̃ pur vie, et puis al oeps Philip Countee de Arundell ſon eygñ fitz in taile, oue diuers remainders ouſter, oue puiſo, que ſil ſerra minded de alter & reuoker les dits vſes, & ſignifiera ſon ment in eſcripꝰ deſouth ſon ꝓper maine & ſeale, et ſubſcribed p 3. credible witneſſes, que donq̃s &c. et puis le dit Duke fuit attaint de hault Treaſon, que eſt ꝓuiſo on condition ne fuit done al Roygne per le dit act de 33. H. 8. pur ceo q̃ le perfoꝛmance de ceo fuit pſonel, & inſeperablemẽt annexe al pſon, ceſtaſcauoir, a ſignifier ſon ment per eſcript deſouth ſon ꝓper maine, que nul auter poit faire, mes le Duke meſme; Sur q̃l point toutz les poſſeſſions del Dukedome iſſint conuey vt ſupra, fueront ſaue, et nemy foꝛfeit per lattainder. 53. H. 6. 56. Les Templers teignont diuers de lour poſſeſſions in frankalmoigne (quel tenure come Litt̃ dit, eſt annexe in priuitie al ſanke le donoꝛ) et puis ils fuer̃ diſſolues, & per pliament Añ 17. E. 2. lour poſſeſſions fuer̃ done al Hoſpitalers, a tener eux in meſm̃ le manner come les Templers teignont; vncoꝛ ilz p ceux geñal paroꝛ ne teigneront in frankalmoigñ, pur ceo q̃ le priuitie del tenure del pt le teñ ne continue, & ceſt priuitie eſteant pſonel, & inſeperabl̃ per general paroꝛ del act, ne fuit tranſferre al Hoſpitalers. Meſme le ley dun impꝛopꝛiation dun Eſgliſe, que auxy eſt incident inſepable al meaſon de Religion, a que leſgliſe eſt impꝛopꝛiat: Et pur ceo eſt adiudge in P. 3. E. 3. que les Hoſpitelers p le dit act de 17. E. 2. naueront le impꝓpꝛiation, car ceo fuit inſeperablemẽt annexe al coꝛpoꝛation des Templers, quel choſe, conſiſtant in inſepable priuitie, per general poꝛ dun act de pliament ne ſerra tranſferre al auters. Iſſint fuit adiudge Triñ 25. Eliz. in le Marqueſſe de Wincheſters caſe, (quel vide in le 4. part de mes Reports) q̃ per geñal paroꝛ de touts hereditam̃ts &c. vn vr̃e de Erroꝛ que pſon attaint auoit ne fuit done al Roy, car vr̃e de Erroꝛ eſt vr̃e q̃ giſt in priuitie: Et le chiefe Baron dit, que il ne veve vnques in aſcun Act de attaindr̃, actions q̃ appent al pſon attaint done al Roy. En temps H. 8. Brooke tit̃ Corodie 3. eſt tenus, que vn Founderſhip, q̃ auxy eſt choſe annexe inſeperablemẽt al ſanke del foundoꝛ, ne ſerra foꝛfeit per attainder, vide 1. 5. E. 4. Mes in le caſe al barr̃, le condition, ſ. le tender del

anule, neſt pas annexe al perſon de Sir Frauncis, mes cheſcun auter poit ceo faire cibien come luy meſme. Meſme la ley de payment de money, deliuerie de eſperons de oze, ou auters ſembles. Quant al 3. obiection fuit reſolue, q̄ quant le ſtatute done le condition al Roigne, q̄ le perfozmaunce de ceo (que neſt pas perſonel et inſeperable) eſt done auxy al Roigne, come incident a ceo; car le perfozmance eſt le ſubſtance et le effect del condition, et leſtatute mit le Roy in le lieu del plon attaint a faire ceo pur le perfozmāce del condition, q̄ eſt feaſible, et q̄ neſt pas inſeperablement annex al perſon de ceſtuy q̄ eſt attaint. ℂ 4. Fuit obiect, que coment que le condition ſerra done al Roigne et le perfozmaunce de ceo auxy, vncoꝰ le leas ne ſerr̄ void, car leſtate pur vie de Sir Frances ne fuit ſubiect al condition: car vn vſe al common ley fuit vn truſt & confidence repoſe in vn plon, q̄ auter plon auer a les pfits, iſſint q̄ couient eſte ſeperation del poſſeſſion, et del vſe, ou per couenant, ou p feoffemēt, fine, ou auter conueyance, p que eſt vn tranſmutation del poſſeſſion: mes in nr̄e caſe, il meſme eſtoiera ſeiſie al vſe de luy meſme pur vie, q̄ ne poit eſte come vn vſe, car il meſme eſt terre tenant, et neſt alcun ſeperation del poſſeſſion, & neſt alcun truſt ou confidence, et il ne poit auer Subpena vers luy meſme adeuant le ſtatute; et le ſtatute de 27. H. 8. execute poſſeſſion a ceſty ſolemēt que ad vn vſe, et que nad poſſeſſion deuant: mes Sir Frauncis in nr̄e caſe ad le poſſeſſion deuant, et pur ceo le ſtatute ne poit doner poſſeſſion a luy, mes ſon eſtate pur vie fuit parcel de ſon veiel eſtate. Auxy nota, leſtatute de 27. H. 8. dit, al vſe dun auter plon &c. iſſint que auter perſon couient dauer le vſe que ceſty que ad le poſſeſſion. Et Vide 30. H. 8. tit Feoffemēts al vſe Br. 47. ceſty q̄ vſe in taile deuant leſtatute fuit infeoffe per les feoffees, et puis leſtatute de 27. H. 8. fuit fait, leſtatute ne donera a luy poſſeſſion in taile ſolonqꝫ le vſe, pur ceo que il ad le poſſeſſion deuant, pur ceo q̄ ne fuit ſeperation del vſe et poſſeſſion al temps del feaſaunce del ſtatute. Et donques ſi leſtate pur vie ſoit parcel de ſon veiel eſtate, ceo neſt pas ſubiect al dit prouiſo ou condition, et per conſequence per le perfozmaunce del condition leſtate pur vie neſt deſeate, et donques le leas pur 40. ans que eſt derive hozs de ceo remaine bone. Mes fuit reſolue per le Court, que Sir Frauncis ad le eſtate pur vie per le limitation del vſe et loperation del ſtatute de 27. Hen. 8. et ils mult reliont ſur le reaſon et rule de Baintons caſe in Plowd. Comment̄, que home pur aduauncement de ſes heires males poit couenaunter, a eſtoier ſeiſie al vſe de luy meſme et ſes heires de ſon corps: in ceſt caſe eſt nul ſeperation del poſſeſſion et vſe, et vncoꝰe

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leſtatute create vn eſtate in taile in poſſeſſion in luy, in quel caſe tout leſtate taile eſt in luy meſme; mes ceo eſt pur le benefite del heire male, coment que il eſt in futuro, et nemy in prſenti, car nul poit ſcauer que ſerra ſon heire male, car ſolus Deus facit hæredes non homo: mes in ceſt caſe ceo eſt pur le benefit del Nephewe in prſenti, dauer les vſes raiſe ſolonque les dits Indentures. ¶ 5. Fuit obiect, que coment que leſtate pur vie ſoit defeate per le condition, vncore le Roigne ne auoidera ſon leas demeſne: car quant le Roygne ad eſtate pur auter vie, et auxy condition in luy per leſtatute de tricesimo tertio Hen. octaui, et el fait leas pur ans, coment que le Roigne performe le condition, el nauoidera le leas. Come ſi in tiel caſe vn common perſon vſt ewe leſtate pur vie, et le Roigne le condition, et le common perſon vſt fait leaſe del terre, et le Roygne vſt confirme ceo, et puis le condition eſt perfourme, vncore le leaſe eſt bone. Et ſi le morgagee fait leas pur ans, et le morgageor confirme ceo, et puis le condition eſt performe, le leaſe ne ſerra auoide. Et le caſe dun Arden fuit cite. Tenant in taile fait leaſe pur vie, ore il ad gaine nouel fee per tort, et puis il graunt rent charge, ou fait leaſe pur ans, et puis tenant pur vie morust, il nauoidra ſa charge, ou leaſe, coment que il ſoit eins dun auter eſtate, pur ceo que il auoit defeaſible poſſeſſion, et auntient droit, le queux ſi ſoient in ſeueral maines ſerra bone, come leas de lun, et confirmation de lauter, et eſteant in lun maine, ſerra tant in iudgement del ley. Nota, le leaſe eſt le pluis fort caſe que le charge. Vndecimo Hen. 7. 21. Edridges tenant in taile fait feoffement a ſon vſe ſur condition, et puis ſur ſon recogniſaunce le terre eſt extende per leſtatute de primo Rich. tertio, et puis il performe le condition, vncore le intereſt del conuſee ne ſerra auoide, et vncore leſtate eſt chaunge, Cauſa qua ſupra. Et tout ceo fuit affirme per Curiam. Mes quant a ceo fuit reſolue, que le demiſe le le Roigne ne enurera (a ſon ſpecial prciudice) a 2. entents, ſ. a vn demiſe del terre, et auxy a vn ſuſpenſion de ſon condition, per que el poit defeater leſtate pur vie, et les auters eſtates, come ſerra in le caſe dun common perſon, ou a vn demiſe in reſpect de ſon preſent eſtate pur auter vie, et auxy a vn confirmation in reſpect de ſon condition, per que auterment el poit defeater tout, come ſerra auxy in le caſe de common perſon: Car le graunt le Roy ſerra priſe ſolonque ſon expreſſe intention compzehend in ſon graunt, et ne extendet al alcun auter choſe per conſtruc-

tion, ou implication, que nappiert per son graunt que son entent extendō; et pur ceo in tielx cases, le Roy couient este voirement informe, & il doit faire especial et particuler graunt, que per expresse parolx poit enure a touts tiels seueral intents come sont desire. Come in 17. E. 3. 39. Aduowson tenus del Roy est alien a vn Abbot, ore le Roy ad title al aduowson pur le mortmaine, & puys le Roy per ses Letters patents graunt al Abbot que il poit tener laduowson in proper oeps, vncore il ne perdera aduauntage del mortmaine, car quant le Roy ad 2. droits in luy, il ne poit exclude luy de ambydeux sans special parolx. Vide 9. H. 7. 14. Plowd. Commentī 397. &c. Et si in cest case le demise le Roygne amountera a vn confirmation per force de son condition, ou si le demise amountera a vn suspension del condition, donques sur ceo ensuera, que el durant le terme ne poyt performer le condition, quel serra graundment preiudicial al Roy. ¶ 6. Et quant al dit tender per force des dits Letters patents, et le certificate del ceo in Leschequer, fuit obiect, que ceo ne serra sufficient, mes le tender couient este troue per office, car coment que les Letters patents sont de record, vncore le tender mesme est matter in fact, quel couient este troue per office; car certificate de Euesqz per force del briefe le Roy, ou del Marshall del host le Roy, come in 2. Edw. 4. fol. 1. queux et autielx semblables ne sont trauersable, mes sont trials in ley, et lyera les parties: Mes in nostre case, si cest certificate, que nest fait sur alcun ordinarie course de proceeding, serra bone in ley, serra graund preiudice al partie, car nul certificat que est allowe et garrant per le Common ley est trauersable; & donques le matter poyt este faux, & le partie disherite, et vncore il nauera alcun remedie, le quel serra inconuenient. Mes fuit resolue per toram Curiam, que le tender et certificate in cest case fuit assetz sufficient, & q̄ le partie greeue si ceo soit faux, poit trauerss ceo, et ne serra conclude per ceo, car ceo ne fuit in nature dun trial, mes dun record a informer & satisfier le Roygne de sa title. Auxy ils resoluont, que maintenant per le tender del annule solonque le dit prouiso, ou condition, les vses fueront determine, et nul in ley, et per consequence, le terre vest in le Roigne per force del attaindre et del act de nicesimo tertio Hen. octaui. ¶ 7. Fuit obiect, que le dit conueya unce fuit voide per le dit act de 28. Elizabeth. et donques fuit Sir Fraunces al temps de son Treason commit et attaindre sur ceo seisie des dits terres in fee q̄ux fuer̄ forfeit

forfeit al Roigne, et veſt in luy per le dit act de 33. H. 8. et per conſequens le dit leas fait per le Roigne (eſteaunt al temps de feaſaunce de ceo ſeiſie in fee) eſt bone: et a prouer q̃ le conueyaunce fuit voide per leſtatute deuant le dit tender del anule, iſſint que leſtate ne fuit defeat per le condition, mes le conueyaunce in que le condition fuit conteine fait voide per le act de 28. Eliz. deuant le dit tender del anule, et deuant le leaſe fait; le letter del ſtatute eſt, que chelcun perſon &c. within two yeares after the laſt day of that Seſſion, ſhall openly ſhew and bring forth into the Exchequer his conueyaunce, and there in the Terme time in open Court ſhall exhibite &c. the ſame to be entred and inrolled of record &c. et le tender del ring fuit 18. Martij añ 31. deuãt quel iour touts les termes in les 2. ans fuer̃ paſſe, iſſint q̃ apres Hillary terme paſſe Anno 31. ne fuit poſſible que le conueyaunce ſerra inrolle deins les 2. ans in open Court in le temps del terme. Car les 2. ans paſſer̃ per effluction de temps deuant Eaſter terme, & pur ceo maintenant apres Hillary terme paſſe le conueyance fuit voide, et per conſequence le condition auxy. Et ſur ceo le caſe in temps E. 1. tit̃ Couenant 29. & Fitz. Nat. Br. fuit mis, que coment que le couenant ſoit que il layſer le boyes in cy bone plight &c. al fine del terme, ſi le leſſee ſuccide les arbres, il auera couenant maintenant, car neſt poſſible q̃ il layſer les arbres &c. al fine del terme, iſſint q̃ le impoſſibilitie del act donera preſent action ſur future couenant. Mes fuit reſolue p̃ le Court q̃ al temps del tender del anule le dit conueyaunce (et p̃ conſequence le condition) fuit in force: et lour reaſon fuit pur ceo que leſtatute ne require que le enroulment del conueyance que eſt lact del Court ſer̃ deins les 2. ans, mes le monſtrans et exhibiting de ceo que eſt lact del p̃tie couient eſtre deins les 2. ans, car quant al monſtrans et exhibiting del conueyaunce les parolx ſont (within two yeares &c. ſhall &c. there in the terme time in open Court exhibite the ſame) donques les parolx, pcheine enſuants ſont (to be entred and enrolled of record) iſſint que nul temps eſt limit quant ceo ſerra inrolle, mes ſi les parolx auoient eſte, and then and there ſhall be entred and inrolled of record, dõques le conueyance couient dauer eſte inrolle deins les 2. ans, mes come les parolx ſont ceo poit eſte inrolle apres les 2. ans paſſe. Et ceo fuit le primer caſe (dont ieo ay notice) qne fuit argue et adiudge ſur le dit act de 33. H. 8. q̃ done condicions de plons attainted de treaſon al Roy. Et in le argument de ceſt caſe le caſe de Thomas Warkenfield armig̃ Añ 19. Eliz. in Leſchequer, et diuers auters caſes des plons attainted de Treaſon, queux auoient power de reuocation, fuer̃ cite,

et sur consideration de eux p lez Barons, ils resoluont vt supra, et done iudgement pur le Roigne. Mes le Councel del Fraunces Englefield ne fuer satisfie oue le iudgemt, et principalmẽt quant al principal point: Car semble a eux q̃ come cest case est, le condition fuit cy inseperablement annex al person de Sir Fraunces, que ceo ne fuit done al Roigne per le dit act de 33. H.8. Et lour aduise fuit a porter briefe de Errour. Mes al prochein parliament, ſ. 35. Eliz. especial act de parliament fuit fait a establier le forfeiture al Roigne.

Trin. 34. Eliz.

Case de Swannes.

IN le Roigne & Madam Joan Yonge iades le fem de Sir John Yong chiualer decease, & Thomas Saunger def. le case fuit tiel. Un office fuit troue al W. in le Countie de Dorſ. 18. Septemb. Añ 32. Eliz. deuant Sir Mat. Arundel et auters commissioners del Roigne desouth le graund seale, Qd̃ a villa de Abbotſ-burie in prædict' comitat̃ Dorſ. vſq; ad mare p insulam de Portland in eodem com̃ est quædam estuaria, Anglicè a Mere or Fleete, in quam mare fluit & refluit, in qua quidem estuaria sunt 500 cigni, quorum 410. sunt albi, et 90. sunt cignetti, & quod omnes prædicti cigni & cignetti sunt in possessione Iohannę Yong & Thom̃ Saunger, & quod quilibet eorum est valoris 2. s'. 6. d'. quodq; maior pars tempore captionis dictæ inquisitionis minimè fuer signat̃: quel office esteant certifie in Leschequer, vn briefe fuit direct al Vicont de meſme le Countie a seisier touts les dits blaunche Swannes nient marked, per force de que le Vicont retorñ, que il ad seisie 400. blaunche Swannes &c. A q̃ puis, ſ. Hillar̃ 34. Eliz. les dits

Joan

Joan Pong, et Thomas Saunger plede, Qd' prædict' eſtuaria ſiue aqua, iacet in parochia de Abbotsbury, in Comitatu Dorſ. (et abbutt' ceo) et q̃ deuant le inquiſition pꝛiſe, Labbot de Abbotſbury fuit ſeiſitus de p̃dict' eſtuar', & de ripis & ſolo eiuſdem in fee, et que al temps del inq̃ſition, & de temps dont &c. fuit, & adhuc eſt quidam volatus cignorum & cignettorum ferorũ, vocat' a game of wilde Swannes, in eſtuaria ſiue aqua illa, & ripis, & ſolo eiuſdem nidificant', gignen', & frequentañ, Anglicè haunting, de quo quidem volatu cignorum & cignettorũ, prædict' Abbas & omnes prædeceſſores ſui Abbates Monaſterij prædicti, per totũ tempus prædict' habuere & gauiſi fuerunt, & habere & gaudere conſueuerunt, tot ꝓfic' & increment' oĩum & ſingulorũ cignorũ & cignettorũ ferorũ in eſtuaria p̃dicta nidificant', gignent', & frequent': qui quidem cigni & cignetti per totum tempus prædict' fuerunt ferę naturæ, & infra idem tempus ijdem cigni & cignetti ſeu eorum aliqui aliquo ſigno non vſi fuiſſent, nec conſueuiſſent ſignari, niſi qd' prædict' nuꝑ Abbas & prædeceſſores ſui p̃dict', per totũ tempus p̃dictũ ad eorum libitum quoſdam ſeu aliquos de minoribus cignettis annuatim pullulant', quos ad vſum & culinę & hoſpitalitatis ſuæ ſtatuerunt expendend', in hunc modum annuatim ſignare conſueuerunt, & vſi fuerunt, vidꝛt, amputare mediam iuncturam vnius alę, Anglicè to cut off the pinion of one wing, cuiuſlibet talis cignetti, ea intentione, qd' cignetti ſic amputati minimè valerent auolare: Et puis le dit Abbot ſurrender les p̃miſſes al Roy H.8. que añ 35. de ſon raign̄ graunt al Giles Strangwaies armig̃ p ſes letters patents, (inter alia) totam illam liberam piſcariam noſtrã in aqua vocat' the Fleet in Abbotſbury p̃dict', ac omnia meſuagia, aquas, piſcat', ac cętera hęreditament' noſtr' quęcunq; in Abbotsbury, in d. com̃ Dorſ. dicto nuper Monaſterio &c. adeo plenè & integrè &c. et in tam amplis modo & forma &c. et q̃ le dit Giles mozuſt, et ceo diſcend a vn Giles Strangwayes ſon Coſine et heire que demiſe al def. le dit game de Swannes pur vn an &c. et pꝛiont quod manus dictæ dñæ Reginæ amoueantur. Sur que Latturney le Roigne demurre in ley.

¶ 1. Fuit reſolue, que touts blaunche cignes nient marked, queux ount gaine lour natural libertie, et ſont natants in vn ouert & cõmon ryuer, poyent eſte ſeiſie al vſe le Roy p ſon Pꝛerogatiue, pur ceo q̃ volatilia (quæ ſunt ferę natura) alia ſunt regalia, alia cõia: et iſſint aquatilium, alia ſunt regalia, alia cõia: come vn cigne eſt volatile royal, & touts ceux le ꝓpertie de q̃ neſt pas conus, appent al Roy p ſon pꝛerogatiue: et iſſint Balene & Sturgeons ſont piſſons royal, & appent al Roy p ſon p̃rogatiue. Et la auoit eſte aunciẽt officer le Roy appell' Magiſtr̃ deductus cignorũ,

que

que continue iesqz a cest iour. Mes fuit auxy resolue, que le subiect poit auer property in blaunche Cignes nient marked, come alcun poit auer cignes nient marked in ses pzиate ewes: le ppertie de eux apperteiñ a luy, ꝛ nemy al Roy, et sils eschapont hozs de ses pzиate ewes in vn ouert ꝛ cõmon ryuer, il poit eux amesner, et eux repzender: Et oue ceo accozd Bracton Lib. 2. cap. 1. fol. 9. Si autem Animalia fera facta fuerint mansueta, & ex consuetudine eunt & redeunt, volant & revolant (vt sunt Cerui, cigni, pauones, & columbę, & hmodi) eousq; nostra intelligantur, quamdiu habuerint animũ reuertendi. Mes sils ont gaine lour natural libertie, ꝛ sont natants in ouert ꝛ common riuers, le officer le Roy poit eux seisier in le ouert ꝛ cõmon riuer pur le Roy, car vn blaunche cigne sans tiel pursuit (come est auantdit) ne poit este conus del auter, et quant le pzopertie dun Cigne ne poit este conus, ceo esteant de son nature royal volatile, appent al Roy. Et in cest case le liure in 7. H. 6. 27. fuit vouche, ou Sir John Tiptoft pozt acẽ de Trñs de ses cignes a tozt pzise: le def. plede q̃ il est seĩ del seigniozie de S. deins q̃l seigniozie toutz ceux q̃ estate il ad in le dit seigniozie ont ewe de temps dont ꝛc. touts streyes esteant deins le dit manour, ꝛ nous diom⁹ que les dits cignes fueront estrayants al temps in le lieu ou ꝛc. et no⁹ come seignioz seisomus, ꝛ fesom⁹ pclamation in fayzes ꝛ markets, et tantoft q̃ nous auom⁹ notice que fueĩ vostr̃ cignes, nous a vous deliueram⁹ a tiel lieu: Le pl̃ replie, que il fuit seĩ del manour de B. ioynant al sñozie de S. ꝛ diom⁹, q̃ nous ꝛ nous auncestrz, ꝛ touts ceux ꝛc. ont ewe vse de temps dont ꝛc. pur auer cignes natants p my touts le sñozy de S. et diomus q̃ longe temps deuant le pzisel, nous mittomus eins, et fesomus notice de eux al def. que fueĩ nr̃e cignes, ꝛ pziom⁹ nostre damages: et lopinion de Straunge la fuit ozе bien appzoue p le Court, que le replication fuit bone, car quant le pl̃ poit loyalment mitter ses cignes la, eux ne poient estre strayes, nient pluis q̃ les auers dalcun poient este strayes in tiel lieu ou ils doyent auer common, pur ceo q̃ ils sont la ou le owner ad interest de mitter eux, et in quel lieu ils poient este sans alcun negligence ou laches in le owner. Hozs de q̃l case ceux points fueront obserue concernant Cignes. ¶ 1. Que chescun q̃ ad cignes deins son manour, cest-ascauoir, deins ses pzиate ewes ad ppertie in eux, car le briefe de Trñs fuit de ses cignes a tozt pzise, s̃. Quare cignos suos &c. ¶ 2. Que vn poit p̃scribe dauer game de cignes deins son manour, cibien come warren, ou parke. ¶ 3. Que cesty q̃ ad tiel game de cignes poit pzescriber, que ses cignes nateĩ deins le manour

manour dun autr. ¶ 4. Que vn cigne poit estr estraie: & issint ne poit este ascun auter volatile, q̃ ieo ay lie in ascun liure. En 2.R.3. fo.15.& 16. le Sñr Strange & Sir John Charleton port acc̃ de Trñs vs 3. pur ceo q̃ les Def. auoient prise & imports 40. cignets des pl' in le County de Buck. as dam̃z de x.l. Un des Def. plede, q̃ le ewe de Thamise curge p my tout le Roialm̃, & q̃ le dit County de Buck. est adioinant al Thamise, & q̃ le custõe del dit Coũty de Buck. est, & ad estr de temps dont &c. q̃ chescun cigne (car cignet in le liure est prise pur vn cigne) q̃ ad son course in ascũ ewe, q̃ ewe curge al Thamise deins m̃ le County, q̃ si cigne viẽt s̃ le tre dascun hõe, & la eyre & ad cignets sur m̃ la terr, q̃ donq̃z cẽy q̃ ad le pperty de le cigne aũa 2. de les cignets, & cesty a q̃ le tre est aũa le 3. cignet, le q̃l serr de meins value q̃ lauks 2. Et ceo fuit adiudge bon custome, pur ceo q̃ le possessor del tre suffer eux deyrer la, ou il puit aũ eux enchaser hors. Et p cest iudgem̃t auxi appiert q̃ hõe poit alledg̃ custom̃ ou p̃scribe in cignes ou cignets. Et in m̃ le caz est dit, q̃ in verity le matr fuit, q̃ le Sñr Straũg auoit certein cignes, q̃ux fuer cockz, & Sir John Charletõ certeine cignez q̃ fuer hens, & eux auoient cignets int eux, & pur ceux cignets les owñs ioindrõt in vn acc̃, car in tiel case. p geñal custom̃ del Realm̃, q̃ est le cõmon ley in tiel case, les cignets appẽt al ambideux les owñs in cõmon owelm̃t, s. al owner del cock, & al owñ del hen, & lez cignets sera deuide int eux, & le ley de ceo est foundue sur vn reason in natur: car le cock cigne est vn embleme, ou repsentation dũ affectionate & voier baron a sa feme oustr touts auts volatiles, car le cock cigne teigne luy m̃ a vn female solem̃t, et a cest cause nature ad conferre sur luy vn done oustr toutz auts, & ceo est a morer cy ioyeusm̃t, q̃ il chaunta dulcemẽt q̃nt il morust, sur q̃ le Poet dit:

Dulcia defecta modulatur carmina lingua,
Cantator, cygnus, funeris ipse sui. &c.

et pur ceo cest case de cigne differt de case de kine ou auter brute beasts: Vide 7.H.4.9. Et fuit agree q̃ nul poit aũ Swan mark, q̃ Latinè dicit cigninota, sinõ q̃ soit p grãt le roy, ou de sez offic̃z a c̃ authorise, ou p p̃scripc̃: & sil ad loial swan marke, & ad cignes natãts in ouertz & cõmõ riũz loialm̃t marke oue c̃, eux appẽt a luy ratione priuileg': Mez nul aũa swan mark ou game de cignes, sinõ q̃ il ad tres & teñtz destate de frãktenem̃t del annuel value de 5. marks, oustr touts charg̃, s̃ pain de forfeitur de ses cignes, dont le Roy aũa lun moity, & cesty q̃ serse a ũa lautr moity; et ceo est p lesta. de 22.E.4.ca.6. Et cẽy q̃ ad tiel Swan marke, poit ceo granter oustr. Et de ceo ieo ay veie vn notabl' p̃sident in tẽps H.6. & est tiel. Notum sit oibus hoib' p̃ntib' & futuris, qd' ego Iohẽs Steward Mil', dedi &

con-

concessi Thomę filio meo primogenito,& hęredib⁹ suꝫ, cigninotã meã armorũ meorũ, ꝓut in margine laterali pingitur,quę mihi iure hęreditario discẽdebat,post mortẽ Ioh.Steward militis pris mei: Habend' sibi & hæredibus suis, vnà cũ oĩbus cignis & cigniculis, cum dicta nota baculi nodati signaꝫ,sub conditione,q̃ quilibet feria solis durañ vita,à gula Augusti,vsq; ad Carnisprivium apud domũ meã de Darford, vnũ cigniculũ bene signatũ mihi aut meis deliberet,qd' si defecerit,tunc volo,qd' hoc p̃sens chirographũ cassetur penitus, & ꝓ nihilo hẽatur. In cuius rei testiꝫ,ad instantiã Matildę vxoris meę, meũ sigillũ secretũ Christi crucifixi p̃sẽtibus feci apponi. Hijs testibus,Rob.Clico, Ioh. de Conyers, Alano Fabro,& al'. Datꝫ apud domũ meam mansionalẽ de Darf.in vigilia S.Dunst.Eñi,anno regni Regꝫ Henrici post cõquestũ Angl'sexti 14. et in le margent fuit depict vn petit ragged staffe. Et in cest case fuit resolue, q̃ in alcun de ceux q̃ sont feræ natura, home ad ius proprietatis, vn droit de ꝓpertie, & in alcun de eux hõe ad ius priuilegij, vn droit de priuiledge. Et sont 3. mañ de droits de ꝓpertie, s̃. ꝓperty absolute, ꝓperty qualefied, & ꝓpertie possessorie: proptie absolute hõe nad in alcũ q̃ est ferę naturꝫ, mes in ceux q̃ sont domitę natura: ꝓpertie qualefied & possessorie home poit añ in eux q̃ sont ferę natura, & a tiel ꝓptie hõe poit attainer p 2. voies, p industrie, ou ratione impotentię,& loci, p industrie,come p prisel de eux, ou p resans de eux mansueta, i. manui assueta, ou domestica, i. domui assueta: Mes in ceux q̃ sont ferę natura, & p industrie sont fait tame, hõe nad forsq; qualefied ꝓpty in eux,s̃.cy long come eux remaine tame, car ils attainont a lour natural libertie, & nont animũ reuertendi, le ꝓperty est pdue, ratione impotẽtię & loci: Come hõe ad iune shoulers, ou goshawkes, ou sẽblables, q̃x sont ferę natura, & ayꝫont in mon fre, ieo ay possessarie ꝓpertie in eux; car si vn prist eux quãt ilꝫ ne poiẽt voler, le owner del soile añ actiõ de Trñs, Quare boscũ suũ fregit,& tres pullos esꝑuorũ suorũ, ou ardearũ suarũ, precij tantũ,nuper in eodẽ bosco nidificantꝫ, cepit & asportauit, et oue ceo accordãt le Regist'er, & Fitz.Nat.B.86. b. & 89.b. 10.E.4.14. 18.E. 4.8. 14.H.8.1. b. Stamford 25. b. &c. Vide 12.H.8.4. & 18. H. 8. 2. Mes quant home ad beasts sauages ratione priuilegij, come per reason de parke, garren, &c. il nad alcun ꝓpertie in la deere, ou conies, ou phesants, ou partridges; & pur ceo in action, Quare parcũ,warrennam,&c. fregit & intrauit,& 3. damas,lepores,cuniculos, phasianos, perdices,&c. cepit & asportauit, il ne dirra suos, car il nad ꝓpertie in eux, mes ils appent a luy ratione priuilegij pur son game & pleasur̃, cy long come ils remainont in le lieu priuiledge; Car si owner del Parke mozust, son heire añ eux, et nemy ses executozs ou administratozs, pur ceo q̃ sans eux le pke q̃ est vn inheri-

inheritance nest my compleat; ne felonie poit este cõmit de eux, mes de eux q̃ sont faits tame, in q̃x home per son industrie ad alcun ꝑperty, felony poit este commit. Et oue ceo accord le rule del liure in 3.H.6.55.b. 8.E.4.5.b. 22.H.6.59. que est malement repozt, et 43.E.4.24. vide 22.Ass. 12.H.8.3. 13.Eliz.Dier 306. 38.E.3.10. Vide 2.E.2.tit Distres 2.E.2.Auowrie 182. Mes home auera ꝑpertie in alcun choses q̃ sont de cy base nature q̃ nul felonie poit este commit de eux, & nul home ꝑdra pur eux vie ou member; come de bloodhound & vn mastike molossus, 12.H.8.3. vide 18.H.8.2. Mes cesty q̃ emblee lez egges de cignes hozs del nest, ſra imprison per vn an & iour, et fine al volunt le Roy, lun moitie al Roy, & lauter al owner del terr̃ ou les egges fuer issint prise, & ceo est p lestatute de 11.H.7.cap.17. Et dauncient temps ad este dit, q̃ cesty que emblee cigne in ouert & cõmon riuer, loialmẽt marked, meslñ le cigne (si poit este) ou auk cigne, serr̃ pend in vn meason p le beake, et cesty q̃ emblea luy serr̃, in recompence de ceo, chale a doner al owner tant de frumẽt q̃ poit couerer tout le cigne, per mitter & verser del frument sur teste del cigne, tanqz le teste del cigne soit couer oue le frument. Et fuit resolue, que in le principal case, le prescripc̃ fuit insufficient, car leffect del dit ꝓscription est dauer touts wilde Cignes q̃ sont ferę natura, & nient marke, nideficanr̃, gignenr̃, & frequentanr̃, deins le dit creeke. Et tiel prescripc̃ pur vn warren serra insufficient, ſ. dauer touts pheasants & partridges nidificants, gignents, & frequentants deins son manoz. Mes doit dire dañ free warren de eux deins son manoz, car coñt q̃ ils sont nidificants, gignents, & frequentants in le manoz, il ne poit auer eux iure priuilegij, mes cy long come ilz sont deins le lieu. Mes fuit resolue, q̃ si les def. auoiẽt alledge, q̃ deins le dit creke la auoit este de tẽps dont &c. vn game de wilde Swannes nient marked, nidificants & gignents, et donq̃z dauer ꝓscribe q̃ tiel Abbot, & touts ses ꝓdecessoz &c. auoient vse de touts tẽps aañ & prẽder a lour oeps, alcuns de le dit game de wilde swannes, & lour cignets, deins le dit creeke, ceo vst este bone, car coñt q̃ cignes sont royal volatiles, vncoñ in tiel maner home poit ꝓscribe in eux, car ceo poit auer loial cõmencemẽt p graunt le Roy, car in Roñ Patent añ 30.E.3. pte 2. numero 20. le Roy graunt a C. M. toutz fere cignes vnmarked int Oxford & Londres pur 7. ans: In eodem Roñ añ 16.R.2. pte 1. numero 39. autiel graunt de fere cignes vnmarked in le County de Cambridg. al B. Bereford chker: In eodẽ Roñ añ 1.H.4. pte 6. numeñ 14. vn grant fait a John Fenne, a surueier & custodier touts fere cignes vnmarked, ita quod de proficuo respondeat ad Scaccarium,

per

per ꝙux appiert, ꝙ le Roy poit graunter fere cignes vnmarked, & per consequens home poit prescriber in eux deins certeine lieu, pur ceo que ceo poit auer loial commencemẽt. Et home poit prescriber dauer royal pissons deins son manour, come est tenus in 39. E. 3. 35. pur le reason auantdit, & vncore sans prescripc̃ ils appẽt al Roy p̃ son prerogatiue.

Mich 39. & 40. Eliz. in Leschequer.

Sir Thomas Cecils case.

Sir Thomas Cecill esteant seisie del mannor de Strickston in le County de North. ent in communication oue vn Foster a exchaunger diuers parcels de ceo oue luy, pur certain trez, ꝙ le dit Foster ad in meisme le ville, et deuant aleun exchaunḡ pfected, Sir Thomas conuey le dit mannor et le dit terre del dit Foster, per special noisme del dit Foster, p̃ fait indent et inrolle, al Roigne Elizabeth ses heires et successors, et couenant oue le Roigne, que il fuit seisie cibien del dit mannor, come des dits terres, iades Fosters dun bone estate in fee simple &c. et le dit Sir Thomas fuit lie al Roigne in vn obligation in 10000. marks a perfourmer le dit couenant int̃ auters. Et le dit Sir Thomas auoit, deuant cest temps, exhibite vn Bill in Anglois in leschequer Chamber, cõpernãt le matter auãtdit, & ꝙ les dits trez, pcel del dit mannor, intend deste done in exchaunge al Foster, fuer̃ de greinder value, ꝙ le dit terre del dit Foster, issint ꝙ le Roigne ne fuit deceiue in le value, queux terres pcel del mannor passont al Roy per le conueyance del manor, & nier̃ meins le couenant & obligation del dit Sir Tho. quant a ceo fuer̃ enfreint, et forfeit p̃ le rigor del ley.

Mes

Mes le dit Sir Thomas in son bil relia sur lestatute de 33. H. 8. cap. 39. per que est puruiew, That if any person, of whom any such debt or dutie, is, or at any time hereafter shall bee demanded, alleadge, plead, declare, or shew in any of the said Courts, good, perfect, and sufficient cause and matter in law, reason, or good conscience, in barre or discharge of the said debt, or dutie, or why such person or persons ought not to be charged, or chargeable, to, or with the same, and the same cause or matter sufficiently prooue in such one of the said Courts, as he or they shall be impleaded, sued, vexed, or troubled for the same; That then the said Courts, and euery of them, shall haue ful power, and authoritie, to accept, iudge and allow the same proofe, and wholly and cleerely to acquite and discharge all and euery person and persons, that shall be so pleaded, vexed, sued, or troubled for the same: any thing in this present act before mentioned to the contrarie notwithstanding, &c. et que pces fuit sue vers luy sur le dit obligation hors del court del Eschequer. Sur q̄l act de pliament, & le matter auant-dit (esteant come il suppose bone, pfect, & sufficient cause & matter in reason & bone conscience deins le dit Act, a discharger luy del dit obligation) le dit Sir Thomas p son dit bill pria destre relieue, et sur ceo il auoit Cōmission a examiner testmoignes a p-uer le matter de son bill destre voier, q̄r fuer retorne et publie; Et sur le oier del cause in Court in Lescheq̄r chamber, appiert p le testimonie de diūs testmoignes, que le pl̄ ad fait direct proofe de touts les parts de son bill. Et ore in cest terme añ 39. & 40. Eliz. diuers q̄stions fuer moue touchant cest matter. ¶ 1. Et le p̄n-cipall suit, Si le brauncb del act extende a ascun det mention in le dit act, pur quoy le Roy ad remedie p le common ley, ou in tiels dets, et tiels cases solem̄t, pur quoy le dit act done remedie al roy q̄ il nauoit deuant. ¶ 2. Si le court poit faire discharge p de-cree sur cest bill in Angloys deins lentention del act. Et quant al primer, est ascauoir, que diuers brauncbes del act sont destre consider. 1. Lact fait toutz obligations al Roy in nature dun statute Staple. 2. Auter brauncb done la suit al Roy, comēt q̄ lobligac̄ ad estre fait al autr̄ al vse del Roy. 3. Que le Roy sur suit sur chescun obligac̄ fait, ou en apres dēe fait, recouera damages & costs. 4. Lestatute done remedie al Roy pur recoūy de son det ou dutie &c. per Capias, Extend' fac', Subpena, Attachment, & Procla-mation de allegeance (si besoigne soit) ou autrem̄t come a ascū des Courts serr̄ per lour discretions pense expediēt pur le speedy re-coūy dez detz le Roy. 5. Est vn clause, q̄ le Roy serr̄ p̄ferre in son executions deuant cōmon psons. 6. Le heire q̄ claime p done son auncestor ſra lie a paier le det le Roy (due deuant ou aps le done)

per iudgement, recognizance, obligation, ou auter specialtie, et lia le terre auxi al dette le Roy vers lissue in taile: Donques vient le dit prouiso dont le question surde, que commence, Prouided alwaies, and bee it enacted, That if any person &c. *vt supra.* Et fuit obiect, que ceo extendra solemt in tielx cases in queux remedie est done al Roy per cest statute; Come ou vn bond fuit fait al vse del Roy, ou in charging del issue in taile, ou in charging le heire que claime per done deuant le det accrue &c. la pur ceo que lestatute done al Roy remedie que il nauoit deuant, cest brauncb done le partie isslint charge per cest act, plea a luy discharger, ou per matter de barre in ley, ou in bone conscieuce. Et ceo fuit fortment inforce per le conclusion de cest prouiso: car le conclusion est (come deuant appiert) any thing in this Act before mentioned to the contrarie notwithstanding; isslint que le sence fuit, que le partie poit prender ascun matter in ley ou bone conscience, nient obstant ascun chose conteine deins cest act, que est tant a dire, q̄ cest act ne serra impediment a ceo. Mes in nostre case, le Roy ad remedie per le common ley, & ideo cest prouiso ne aidera luy. Quant a ceo fuit rnde, & resolue per le Court, que le dit Sir Tho. Cecill sur le matter auantdit fuit deste relieue p̄ le aide de cest prouiso, car le dit act de 33. H. 8. ad done benefit et aduantage al Roy: 1. En feasant chescun bond fait al Roy in nature dun statute staple. 2. En donant remedie al Roy mesme pur obligations faits al autets a son oeps. 3. A recouer costs & dammages. 4. En suer de execution pur touts ses dets. 5. En charging lissue in taile, & le heire que ad le terre de done son auncestor: & pur ceo fuit lentendmēt del act a gratifier le subiect, que lou nouel prouision fuit fait pur le leuier del debt le Roy in pluys speedy & beneficiall manner que le Roy nauoit deuant, le subiect auxy auera ascun nouel benefit que il nauoit adeuant, et ceo fuit a discharger luy mesme per matter alleage deste discharge in bone conscience. Auxy cest prouiso ne done benefite solement a cesty que ad matter in bone conscience, mes auxy a cesty que ad good, perfect, and sufficient cause and matter in law, reason, (et donques vient) good conscience: et sans question le prime parolx, cest a scauoir, cause and matter in law, extendera a touts les dettes le Roy, et proces sur ceo cibyen al common ley, come sur cest act: et le conclusion del dit brauncb ne fait encounter ceo, car le sence de ceo fuit, que il pledera matter in ley ou bone conscience, et q̄ riens conteine in le dit act ne serra impediment a ceo. Et isslint fuit tenus in semblable case sur autiels parolx in le second sauant de 27. H. 8. ca. 10. de Vses, in Cheneys case, ou le

ou le prouiso saue le droit &c. des &c. sicome lact nust este fait: & la le case fuit, q̃ le lessor infeoffe le lessee al vse des auters, in q̃l case si lestatute ne vnq̃s vst este fait, le terme vst este merge al commõ ley: Mes Trin 27. Eliz. fuit resolue, que le terme fuit saue, & mesm̃ lexposition fait des pols come deuant. Auxi ceux notable presidents fuer̃ cite, q̃x fuer̃ resolue in Leschequer per les Barons del Eschequer, sur conference ewe oue les 2. chiefe Iustices, lun in le case de Sir William Herbert in Trin 37. Eliz. que fuit relieue sur le dit braunch del dit act per matter in equitie, pur ceo que in Scire facias vers luy come heire a Math. Herbert son pier, sur recognizance conust al roy Ed. 6. p le dit Mathew, le vicont retorñ Scire feci, & sur son default iudgem̃t fuit done, com̃ poies veier in Mathew Herberts case in le 3. part de mes Reports. Et pur ceo q̃ in veritie il ne vnq̃s fuit summon, & ad bone matter, sil auoit notice de ceo de pleder in discharge del dit Recognizance, pur ceo que il ad mul terre p discent de son pier, ne alcun terr̃ de luy aps le Recognizance conus: tout q̃ il monstr̃ in certaine in vn bill in Anglois in Leschequer chamber: sur q̃, sur conference ewe p Sir Roger Manwood, & les auters Barons, oue les 2. chiefe Iustices, per decree il fuit discharge del dit Recognizance &c. Auter case fuit cite: Thomas Duke de Norff. fuit attaint per pliament Anñ 38. H. 8. et le Roy Ed. 6. vende a Sir Edw. Rous diuers arbres de merisme cresceants sur les possessions del dit Duke in Suff. & Sir Edw. fuit lie in vn Obligation al Roy Ed. 6. pur paiment de certaine deniers, a certaine iour pur les dits arbres, & deuãt le iour de payment, et deuant le dit Sir Ed. succide alcun des dits arbres, Ed 6. morust, & al parliament tenus Anno 1. Reginę Mariæ fuit declare per parliament, que le dit attainder del dit duke fuit voide, per que le dit Sir Ed. ne vnques puit enioyer les dits arbres solonq̃ son bargaine. Et in Scire facias in leschequer sur le dit obligation vers le heir̃ & terre-tenant de Sir Ed. anñ 27. Eliz. ils apperont, & pledont tout le dit matter in equitie, in barre et discharge del dit Obligac̃, in vn Latine plea in Leschequer. Et sur bone consideration del statute de 33. H. 8. per les Barons, et del dit plea, al darraine (apres que ceo vst longement depende) fuit resolue per les Barons que les def. fuer̃ deste relieue deins le dit act, & que les defendants bien poyent pleder ceo in barr̃. Et sur ceo Popham attorney generall, veyant lopinion del Court, vlterius psequi non vult. Queux ambideux presidents ieo monstr̃ a les Justices, et accordant fuit resolue per touts les Iustices Dengleterre (que fuer̃ assembles pur doner lour opinion in le dit case) que Sir Thomas Cecil fuit deste relieue, sur le dit matter in

equitie, deins le puruiew del dit brauncb de 33. H. 8. Et secondm̃t, que le court del Exchequer chambr̃ poit bien sur le dit bill in Anglois (coment q̃ le suit fuit p proces al common ley in le court del Exchequer deuant les barons) faire decree in le case, car a cest purpose ne sont forsqz vn Court. Donque fuit moue, si le procheine, puis le procheine ensuant apres le brauncb concernant le equal charging del terr̃ liable al det le Roy in les maines de chescun owner & possessor, & q̃ alcun de eux ne serra charge solement, mes touts entierment, si ceo extende a toutz les dets le Roy, et a touts executions pur leuier de eux cibñ al cõmon ley, come sur le dit act. Et fuit resolue p eux, que le dit brauncb extende a touts executions pur dettes le Roy, cibien al common ley, come sur le dit act, & q̃ touts serr̃ owelm̃t extend̃ p force de cest brauncb, solongz le puruiew de cest act. Fuit auxi resolue, que coñt que le obligation fuit fait pur pformance de couenants, vncore aps q̃ ceo fuit enfreint (come fuit in le case al barr̃ al temps del ensealing and deliuerie de ceo) ceo fuit vn dette al Roy per Obligation deins lact.

Trin.

Trin. 41. Eliz. in Scaccario.

Le Seignior Andersons case.

Nter le Seignior Anderson chiefe Justice del Court de Common Pleas, et Sibthorpe del Melieu Temple, vn question fuit moue sur le brauncb del dit act de 33. H. 8. cap. 39. cestascauoir, That all manours, lands, &c. which now bee, or that hereafter shall come, or bee, in, or to the possession or seisin of any person, to whom the same manours, lands, &c. haue heretofore, or hereafter shall discend &c. in fee simple, or fee taile &c. by, or after the decease of any his or their auncestor or auncestors as heire, or by gift of his auncestor, whose heire hee is, which said auncestor or auncestors was, is, or shall be indebted to the King, or to any other person to his vse, by iudgement, recognizance, obligation, or other specialtie; That then, in euery such case, the same manours, lands, &c. shall be and stand by authoritie of this act from henceforth charged and chargeable, to, and for the payment of the same debt. Si tenant in taile del manour de D. soit lie in vn Recognisaunce a J. S. quel Recognisaunce apres deueigne al Roigne per lattainder de J. S. de haut Treason, et puis tenant in taile mozust, et lissue in taile alien la terr̃ bona fide, si le Roigne poit extender le mannoz de D. in les maines del alienee. Et in cest case 4. points fuer̃ resolue per les barons, sur conference ewe oue *Popham* chiefe Justice et diuers auters Justices. ¶ 1. Fuit resolue, que deuant le dit statute de 33. H. 8. si tenant in taile de terre deueigne in det al Roy per iudgement, Recognisaunce, obligation, ou auterment, et mozust, le Roy ne extendza le terre in le seisin del issue in taile: car le Roy est lie per lestatut de donis condicionalibus, come est adiudge in Plow. comm̃ in le Seignioz Barkleyes case 22. in le principal case; et oue ceo accozd, quant al point in question, resolucion del Court in leschequer, et del Court de Surueyozs in le case de Bzowne pier de Justice Bzowne cõe

eſt repoꝛt in Plow. Coñ 249.b. Iſſint vn point bien reſolue, in que fuit varietie des opinions in nẽ liures. Vide 39. Aſſ. pl. 18. 47. E.3.8. Regiſtr̃ 143.& 144. Fitz. Na. Br. 217. a. et b. ℂ 2. Fuit reſolue, Que ſi tenant in taile deueigne in dette al Roigne per receipt des deniers del Roigñ, ou auterm̃t, ſinon q̃ ſoit p̃ iudgem̃t, recogniꝛance, obligation, ou auter ſpecialtie, & moꝛuſt, la terre in le ſeiſin de liſſue in taile, p̃ foꝛce del dit act de 33.H.8. neꝑa extende pur tiel det le Roigne, car leſtatute de 33.H.8. extend̃ ſolement al dits 4. caſes; et touts auters dets remaine al common ley. ℂ 3. Fuit reſolue, Que ſi tenant in taile deueigñ in debt al Roigne p̃ vn des 4. voies mention in le dit act, & moꝛuſt, & deuãt aſcũ ꝓces, ou extent, le iſſue in taile bona fide alien la terr̃ in taile, q̃ oꝛe ceſt tre ne ſerr̃ extende p̃ foꝛce del dit act de 33.H.8. car come appiert p̃ les poꝛs del dit bꝛaunch, ceo fait la terre in le poſſeſſion ou ſeiſin del hẽe in taile ſolem̃t lyable vꝰ le iſſue in taile, & nemy alienee; Car leffect del puruiew, quant a ceſt purpoſe eſt, That all lands which ſhal be in the poſſeſſion or ſeiſin of any perſon, to whom the ſame ſhall diſcend in fee taile as heire, whoſe aunceſter was indebted to the King &c. That then, in euery ſuch caſe, the ſame land ſhall be charged with the kings debt: iſſint q̃ p̃ lexp̃ſſe puruiew del act, le terre ſerra ſolem̃t extend̃, cy long cõe ceo eſt in le poſſeſſion ou ſeiſin del heire in taile; car lact dit, That in euery ſuch caſe the land ſhall be charged, & intant q̃ le terr̃ vꝰ liſſue in taile, ne fuit extendable deuant le dit act, le Roy ad benefit dextẽder ceo in le poſſeſſion del heir̃ in taile, q̃ il ne puit deuant, mes le Roy ne poit extender in les maines del alienee, car leſtatute ne extend̃ a ceo; & le feaſoꝛs del act ount reaſon a fauour le purchaſoꝛ, farmoꝛ, &c. del hẽe in taile, pluis q̃ le heir̃ meſm̃, car ils ſont ſtrangers al dets del tenant in taile, & ils vient al terr̃ bona fide, & ſur bone cõſideration. Auxy, la eſt auter clauſe ꝓcheine enſuant al dit bꝛaunch, le effect de q̃l eſt, And that our Soueraigne Lord, his heires or ſucceſſors, ſhall not be barred, delaied, &c. to demaund and receiue their iuſt &c. debts againſt any of his ſubiects, as heire, or heires, &c. if any ſuch perſon or perſons ſhal ſay or alleage, that they haue no lands, &c. but only intailed or giuen to them by any of their auncеſters to whom they be heires: iſſint que per ceſt clauſe auxy lentent des feaſoꝛs del act appiert, que le heire in taile ſerra ſolement charge oue le dette le Roy. Mes terres in fee ſimple fueront extendable al common ley, in quecunq; maines que eux deuiendꝛont, et pur ceo quant a eux leſtatute ne fuit foꝛſq; declaratiuũ antiqui iuris; mes quant al eſtates in taile, ceo fuit introductiuum noui iuris vers liſſue in taile, et ceo, in le caſe al barre, fait le diuerſitie des dits caſes,

coment

coment que ambydeux sont conioine in vn meisme sentence. Et *Popham* chiefe Justice dit, que illint ad este resolue in Leschequer, deuant cest temps, in le case de Sergeant Nichols, pier de Sergeant que ore est, que la le terre in les maines del purchaser del issue in taile, ne serr̄ extende per le dit act de 33. H.8. pur le det que le pier del issue in taile deuoit al Roy (per vn des 4. voyes mencion in lact) mes fuit discharge per lopinion del Court del Eschequer. ¶ 4. Fuit resolue, q̄ intant q̄ le dit det, in le case al barr̄, fuit originalm̄t due al subiect, q̄ tiel det nest pas deins le dit act de 33 H.8. a charg̃ le tre in le possessiō ou seisin del heire in taile: car le dit act, quant a charger terres intailed vers lissue, extendō solem̄t aux dets originalment, et immediatm̄t due al Roy, per iudgem̄t, Recognisaunce, obligation, ou auter specialtie; car les poyr sont (indebted to the King, or any other to his vse by iudgement &c.) q̄ est intendō deste immediate det, et nemy aux dets queux fuer̄ due aux subiects, et apptaine ou accrue al Roy p reason de attaindre, vtlagarie, forfeir̄, done del ptie, ou per ascū auter collaterall voy ou meane, pur queux le statute de 33. H.8. ad vn clause, petit deuant le dit brauche, pur le briefe et generall manner & forme de pleadinge, in tiels cases, (pur recouerie de eux in les Courts mencion in le dit act) del pt le Roy, s̄. That the party such a yere and day did giue the same det to the King, or was attainted, outlawed, or other offence, forfeiture, deed, act or thing committed or done, by reason wherof the said debts did accrue and ought to remain, come, and be to the King. Illint q̄ le seueral manns̄ del penninges de ceux 2. brauches manifest lentention des feasors del act, a preferrer immediate dets due al Roy per iudgement, &c. deuant dets del subiects, queux accrue al Roy per assignemēt, attaindre, vtlagar̄, &c. et le reason fuit, pur ceo q̄ dets due immediatmēt al Roy per iudgement, recognizance, obligation, ou auter specialty, sont in lour nature pluis haut, et poient este mieulx conus, et sur search troue, q̄ dets due aux subiects. Auxy quant J. N. est indet al J. S. p iudgem̄t, Recognizance, obligation, ou auter specialtie: et puis J. S. est vtlage &c. p q̄ le det deueigne al Roy per lutlagarie &c. in cest case ne poit este ppm̄t dit, q̄ J. N. est indet al Roy p iudgem̄t, Recognizance, obligation, ou aut̄ specialtie: car p ceux il fuit indet a J. S. & J. S. per son vtlagar̄ (que est le title le Roy) ad forfeit eux al Roy; illint que p force del iudgement &c. et vtlagar̄ le det appertaine al Roy. Et les paroyr del act sont (indetted to the K. or any other to his vse by iudgement &c.) illint que le det, ou couient este immediatmēt al Roy meim̄, ou, si soit a ascun auter q̄ al Roy, ceo couient este originalmēt al oeps le Roy:

et

et ceo nest my quant le det est originalment due al subiect a son oeps demesne, et puis forfeit al Roy per act subsequent. Et is-sint fuit resolne, que pur tiel det le Roign̄ ne extendra ou vers lalienee del heire in taile, ou vers le heire in taile mesme: car tiels debts ne sont deins le dit act de 33. H.8. quant a charger le heir̄ in taile, et issint remaine al common ley come debts immediatment due al Roy, que ne sont due ne per iudgement, recognisance, obligation, ne auter specialtie, come ad estre dit deuant.

Trin̄

Trin 42. Eliz. in communi Banco.

Buts case.

IN Replint Filbe & But, le case in effect fuit. Un seisi de Black acre in fee, & auxi possesse de white acre pur ans, p son fait grant rent hors de ambideux a vn A, a auer et perceiu a luy pur terme de son vie, oue clause de distres in ambideux, et pur rent arere A. distreine et auowe in white acre, &, si les distres fuit bien prise ou nemy, fuit le question. Et fuit agree per totam Curiam, que le distres fuit bien prise. Et in cest case ceux points fueront resolue. ¶ 1. Que si lessee pur ans dun carue de terre, grant a vn auter vn rent hors del dit carue pur le vie del grauntee, que ceo est bone charge durant le terme, si le grauntee viue cy longement: car le graunt serra prise pluis fort vers le grauntor, & ne serra void quant per ascun construction ceo poit estre fait bone (Vide Plow. Comment in Welchdens case) et in tiel case le grauntee nad que chattel. Jsslint, si le lessee pur ans graunt la carue del terre al auter pur terme de son vie, il ad lentier terme, sil viuer cy longement, cibyen come in le case del deuise. ¶ 2. Fuit resolue, que quaunt rent est graunt hors de terre in fee, et hors dun terme pur ans, a auer et perceiuer al grauntee pur terme de son vie, que ceo, come estate de frankstenement solonque le purport del fait, ne poit issuere hors del terme pur ans, mes hors del terre que le grauntour ad in fee simple tantolement, pur ceo que le frankstenement del rent poit issuer hors de ceo, et nemy hors del chattell. Et vn entire rent ne poyt estre frankstenement hors de Blacke acre, & chattel hors de white acre; & a faire 2. rents quant lun solement est graunt per vn al auter, serra in cest case murrious, et le pact et mutuall agrement

agreement des parties, ne poient charger tiel chose oue rent, que nest pas chargeable per la ley, come hors de hundred ou aduowson 30. Lib. Assisarum pla. 5. hors dun faire, 14. Edw. 3. tit Scire facias 122. le Countee de Kents case, ne rent poit estre graunt ou reserue dascun estate de franktenement hors dascun auter hereditament que nest pas mainourable, ou in possession, reuersion, ou per possibilitie, mes est hæreditamentum incorporeum; car pacta priuata non derogant iuri communi: et in Assise ils ne poient este mise in vieu, ne ascun distres poit estre prise in eux. Mes, in le case al barre, White acre est hæreditamentum corporeum & mainorable, mes pur le exilitie et incapacitie del interest, que le grantor ad in ceo, cest rent de franketenement ne poit issuer hors de ceo, mes issera solement hors del terre in fee simple. Et in le case al barre, in assise poyt de cest rent, le terre in fee serra solement mise in vieu, et si le grauntee accept lease ou graunt de white acre, ceo ne suspendra son rent. ¶ 3. Fuit resolue, que White acre serra, durant le terme, subiect al distres del grauntee pur le rent, durant les ans, coment que le rent ne issuet̃ hors de ceo, come in 46. Edw. 3. 14. quant terre est charge oue rent in fee, biens et chateux poient estre oblige al distres. Et fuit dit, que, intant q̃ White acre est solement charge oue distres, si le grauntee prist leas dascun part de ceo, ceo nest ascun suspension del distres, mes que il poit distrainer in le residue; car ceo nest issuant hors del terre, mes destre prise sur le terre: come si ieo ay garren in auter terre, et prise lease del parcell del terre, coment que le terre soit charge oue le garren, uncore, intaunt que ceo ne issuist hors del terre, ceo nest ascun suspension. Vide 35. Hen. 6. 56. 14. Hen. 4. 6. &c. car home poit auer garren in son terre demesne: issint il poit in mults cases distreine in son possession demesne, come in 31. E. 1. tit Distresse 64. & 7. H. 6. 3. per Curiam, un tenant in common distreinera les beasts del auter in la terre que ils ount in common, et 26. Hen. 8. fol. 5. il poit prescribe a distreiner in son terre demesne, mes nemy dauer rent hors de son terre demesne. Si home per fait grant rent de 40. s. a un auter hors de son manor de Dale, a auer et perceiuer a luy & ses heires, et graunt ouster per mesme le fait, que si le rent soit arere, que le grauntee distrainera in le manour de Sale (soit le mannor de S. in mesme le Countie ou in auk, et soit ceo graunt p un fait ou diuers faits) le rent est solement issuant hors del mannor de D. et nest que paine, que il distreinera in le manour de S. mes ambideux les mãors sont charge, lun oue le rent, et lauter oue distres pur le rent, lun issuant hors del terre, et lauter destre prise sur le terre.

Et

Et si ieo graunt a vous, que vous et vostre heires distreinera pur vn rent de 40. s. deins mon mannor de S. ceo per construction in ley amountera a vn graunt dun rent hors de mon mannor de S. car si ceo ne amountera a vn graunt dun rent, le graunt serra de petit force ou effect, si le grauntee nauera forsque vn nude distres, et nul rent in luy: car donques il ne vnques aueroit Assise de ceo &c. & ceo est le reason, que est souent foits rule et resolue, que ceo amount a vn graunt dun rent, per construction del ley, vt res magis valeat, 3. E. 3. 12. 3. Lib. Ass. pla. 7. 14. Ass. pla. 14. 16. E. 3. tit Graunts 64. 18. E. 3. 32. 26. Ass. 38. 30. Ass. 12. 46. E. 3. 18. 32. 8. H. 4. 19. 9. H. 6. 9. 22. H. 6. 11. Litt 48. b. Et in tiel case le grauntee nauera briefe de Annuitie. Mes quant vn graunt rent hors del mannour de D. et graunt ouster, que si le rent soit arere, le grauntee distreinera pur mesme le rent in le mannor de S. ceo est forsque penaltie in le mannor de S. pur 3. causes. 2. Le ley ne besoigne a faire construction, que ceo amountera a vn graunt dun rent, car icy vn rent est expressement graunt deste issuant hors del mannor de D. et les parties auoient expressement limitte hors de quel terre le rent issuera, et in que le distres serra prise, et le ley ne serra exposition encounter lexpresse parolx et entention des parties, quant ceo poit estoier oue le rule del ley; Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est. 2. Si in cest case ceo amountera a vn grant de Rent hors del mannour de S. donques le grauntor serra deux foits charge; car si le grauntee port briefe Dannuitie, ceo extendra solement al mannour de D. car sur le graunt de distresse in le mannour de S. nul briefe Dannuitie gist, pur ceo que le mannour de S. est solement charge, et nemie le person del grauntour, quaunt a ceo; et a cest cause le porter del briefe Dannuitie ne poit discharge le mannour de S. dascun rent: et issint le ley, per construction encounter les parolx et lentention des parties, serra iniurie al grauntor a chargē luy 2. foits. 3. Si in tiel case le mannour de S. in que le distres est solement limitte, serra in auter Countie, donques ad estre souent foits adiudge, que le rent ne issuē hors de ceo, mes le distres serroit come vn meane et remedie a coarcter le tenant del terre a paier le rent. Et fuit dit, que ne fuit ascun diuersitie in reason, que le ley in construction serra le rent destre issuant hors de ceo, quant il gist in mesme le countie, et nemy quaunt il gist in seueral Counties; car les parols in ambideux cases sont tout vn, et nest ascun reason a dire, que il faylera de

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recouerie p assise. Vide supra in Bulwers case; & les liures in 1. lib. Ass. pla. 10. & 1. Ed. 3. 21. & auters liures ne dient, que le rent issuist in tiel case hors de ambideux, mes que le terre in que le distres serra prise est charge, & ceo est voier, car est charge al distresse: et intant que ceo fuit charge al distres, lour opinion fuit, que les tenants de ambideux serra nosme in lassise. Vide les liures in 9. E. 3. 13. 31. Ass. 27. 17. E. 4. 6. 10. Ass. 4. 10. E. 3. 18. 2. E. 2. Assise 360. 1. Ass. 10. 3. Ass. 7. 32. H. 6. 27. 22. Ass 66. 31. Ass. pla. 27. 29. E. 3. Ass. 366. Et lopinion de Finchden in 41. Ed. 3. 15. fuit affirme pur bone ley, que si le mannor de D. hors de que le rent est graunt, soit recouer per eigne title, que tout le rent est extinct, mes si le mannor de S. in que le distres est limit, soit euict, vncore tout le rent remaine. Jssint si le grauntee purchase p cell del mannor de S. le rent nest pas extinct; pur ceo que le rent issuist solement hors del mannor de D. Vide 17. E. 4. 6. semblable case. Et fuit dit q̃ si home graunt rent hors del 3. acres, et graunt ouster, que si le rent soit arere, que il distreinera pur le rent in lun des acres, cest rent est intier, et ne poit estre rent secke hors de 2. acres, et rent charge hors del 3. acre; et pur ceo est rent secke pur tout, & vncore il distreinera pur ceo in le 3. acre. Jssint si rent soit grant a 2. et a lour heires, hors dun acre de terre, & que bien list a lun de eux et ses heires a distreiner in mesme lacre pur ceo; ceo est rent secke: car intant que ils estoient ioyntment seisie dun entier rent, ne poit este quant a vn rent secke, et quant al auter rent charge, & cest distres est come appurtenant al rent: et pur ceo, si cestuy que ad le rent mozust, le survivor distreinet̃, & si ambideux graunt ouster le rent al vn, il distreinera pur ceo. Mes si home graunt rent hors de blacke acre a vn et a ses heires, et graunt a luy que il poit distreine pur ceo in mesme lacre pur terme de son vie, ceo est vn rent charge pur son vie, & rent secke ayres, diuersis temporibus. Autermont est si le distresse soit limit pur certaine ans in mesme la terre, la ceo remaine rent secke entirement, pur ceo que le fee et frankt enement est secke in tiel case. Mes fuit adiudge in le case al barre, que lauowrie fuit insufficient pur diuers causes. ¶ 1. Pur ceo que in lauowrie il ne fuit mention dalcun terre forsq̃ del terre in q̃ il nad forsque leas pur ans, s̃. quod concessit extra terram illam inter alia quendam reddit̃ &c. ou in son auowrie il duist auer derive le rent hors del terre in fee simple solement, car hors de ceo in iudgem̃t del ley le rent pur vie fuit issuant. Et coment que le plaintife, in barre al auowrie ad disclose tout le veritie del matter in special, que in iudgement del ley fait pur lauowant, et ad fait son case

melior

melioꝛ pur luy que lauowant ad fait pur luy meſme, vncoꝛe ceo ne fait lauowꝛie, que fault ſubſtance, bone; car lauowꝛie que eſt in le nature dun count doit conteiñ ſufficient matt ſur que il poit auer iudgement dauer returne. Mes ſi lauowꝛie ou aſcun count ou replication ꝛc. fault foꝛme ou omit circumſtance de tempꝛ, lieu ꝛc. la le plea de lauter partie per ſon plea poit ſaluer tiels imperfections, mez ne poit ſupplier defect del matter de ſubſtance. Vide 6.Ed.4.2.b. 6.H.7.10. 18.Ed.4.16.b. 18.Ed.3.34. Pl.Com.Barkleyes caſe 230. 38.H.6.17. 18. & 19. 22.Ed.4.2. 5.H.7.13. 7.H.7.6.b. &c.

¶ 2. Le auowant plead le graunt hoꝛs del terñ pur ans ſoleñt, ꝛ concluꝺ, virtute cuius il fuit ſeiſie in dominico ſuo vt de libero tenemento pro termino vitæ ſuæ, que eſt repugnant dañ franktenement hoꝛs dun terme pur ans. Et iſſint iudgement fuit done vers lauowant pur inſufficient pleading.

Cases de Quare impedit.

Paschæ 31. Eliz. rott 141.

IOhn Hall port Quare impedit vers leuesque de Bath & Wells, & Thomas Maunton Clerke def. pur disturber luy de presenter al vicar del Wollauington, appendant al Mannour del Wollauington, dõt le deane del Windsor fuit seisie in son demesne come del fee, in droit de son deanrie, & presenk Rob. Pitman son clerk, q̃ fuit institute & induct, & conuey cest Manor al Countee de Leicester per leale pur anz, q̃l assigne tout son interest al George Sidenham Chiualer, que graunt ceo al Christopher Roll, & dur̃ son possession le vicar deuient voide per le mort del Robert Pitman, & le dit Christopher Roll present vn John Dauies son Clerke al dit vicarage, que fuit admit &c. & apres le dit Christopher Roll graunt son interest in le dit leale al pl̃, & puis le vicar deuient voide per depriuation del dit John Dauies, p que il appent al pl̃ de presenk, & les defendants luy disturbe, al ses damages &c. A q̃ leuesq̃ plead, que il claime riens forsq̃ cõe ordinarie, & demaund iudgement si sans speciall disturbance. Et Thomas Maunton dit, que il claime riens in lauowson del vicar, mes q̃ il est vicar del dit esglise, del presentation del dit George Sidenham, que vncore est in vie, nemy nosme in le briefe, & demaund iudgement del briefe. Le plaintife al plea del euesq̃ pria iudgement, entant q̃ il claime riens in le vicar̃, et fuit graunt, mes cesset executio tanq̃ &c. Et quant al plea del Thomas Maunton il demur̃ in ley. Et le sole question del case est, si le Quare impedit gist vers leuesq̃ & incumbent, sans nosmer del patron. Et fuit resolue, que le brief abater̃; & q̃ le patron doit estre nosme in le br̃, & c̃ pur deux causes. Primerment pur ceo que le patronage serr̃ in cest case recouer vs

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cestuy q̃ ad riens in le patronage: & nest reason, q̃ cestuy q̃ ẽ patrõ ꝑ̃ dispossesse & ouste de son patronage, q̃nt il ẽ estraung̃ & nient p̃tie al bre, & nosmeñt in cest caz q̃nt il poit estr̃ fait ptie al br̃. 2. Al common ley, lencumbent ne pleader̃ alcun plea q̃ cõcerne le droit del patronage, & pur ceo serr̃ incount reason, q̃ il ꝑ̃ soleñt nosme in le bre q̃ al common ley ne poit defend le patronage, & cestuy que ad le patronage, & que poit pleader al droit de ceo omit in le br̃e. Car, al common ley, chescun pleader̃ plea q̃ est apt pur luy, & ptinent a son case, come in Assise vbi disseisor & teñt &c. le teñt pleadr̃ plea q̃ concerne le tenancie & nemy le disseisin, & lencumbent al common ley ne pleadra al droit de patronage in q̃ il nad riẽz, mez a ceo le patron pleadra: et le mischiefe fuit, q̃ p̃ le feint pleading ou confession del patron in Quare impedit, lencumbent fuit saungs remedie, cõe le liur̃ ẽ adiudge in 18.E.3.23. q̃ fuit deuãt le stat̃ de 25 E.3. Vide 22.H.6.28. 9.H.6.30.31.&c. mez lestat̃ de 25.E.3.ca.7. enable le possessor &c. (q̃ est tant a dire cõe lẽcumbent, aps induction, cõe ẽ ten⁹ in 4.H.8.fo.1.Dier) a counꝛplead̃ le title prise pur le roy, et dali son rñs, & a mre & defend̃ son dr̃t sur la matr̃, tout soit que il claime riens in le patronage, & p̃ equitie il pleadera vers touts cõmon plons, cõe les liurez sont in 9.H.6.30.31.&c. 22.H.6.28. 13. H.8.13. 14.H.8.29. Vide 39.E.3.30. 27.E.3.81. 46.E.3.13.19. 47.Ed. 3.fol.11. 2.R.2.Incumbent 4. 8.H.5.9. 7.H.4.34. 13.H.4.7. 22.H. 6.26. 16.Ed.4.11. 2.H.7.14. 10.H.4.Statham. Et ẽ destre obserue, q̃ touts foits, q̃nt incumbent plead in barre, il primerñt dit, q̃ il est persona impersonata ecclesiæ prædict̃ &c. p̃ q̃ est imply, q̃ il est admit, institute, & abr̃ de plead̃ in barr̃ s. vbi le roy, q̃ il ẽ admit, institute, & induct, & vbi cõmon plon, q̃ il est admit & institut̃, car donq̃ est eccleſia plena & consulta vbi vn common plon, cõe ẽ ten⁹ in 9.H. 6.31. 22.H.6.27. 21.E.4.34.b. 24.E.3.30. 25.E.3.47. 38.E.3.9.a.44. E.3.3.&c. Mes cẽ diuſit̃ in le case al barr̃ fuit prise & agree, q̃ q̃nt p̃ le iudgeñt in le Quar̃ imp̃ le inheritanc̃, estat̃, ou interest del patrõ in le patronage ẽ dẽe deuest p̃ le iudgeñt in Quare imp̃ port p̃ J.S. la J.N. q̃ ꝑsent (& son clerk resceiue) couiẽt ẽe nosm̃ in le br̃; mes q̃nt lenheritance, estate, ou interest del patron ne serr̃ deuest per le iudgeñt, donq̃s, si auk̃ disturber soit nosme in le br̃e, ne besoigne a nosmer le droiturel patron in le br̃e, et oue cẽ diuſitie accordant nostre liures: car in 42.E.3.fol.7.a. vn port Quare impedit, vers auter, le defendant dit, que il ne claime riens in le patronage, mes dit, que leuesq̃ luy ꝑsent per laps iudgeñt si tost &c. & la Belknap pria brefe al euesq̃, pur ceo que il auer disclayme in le patronage, & le Court ne voille pas graunter ceo, pur ceo que intant que neq̃ le patron, neq̃ leuesq̃ (q̃ in mesme le cas fuit

in lieu de patron)ne fuer̃ nosme in briefe, fuit adiudge, que le briefe abatera; et si tiel briefe serr̃ maintenable, chescun patron per couin int estraung̃ & lencumbent poit ẽe ouste de son aduowson: et oue ceo accordont 9.H.6.30.31.&c. 3.H.4.2.& 3. 13.H.8.13. Mes in 7.H.4.25.37. la in Quare impedit, pur ceo que le presentation fuit soleint recoũ et nemy laduowson, ne le patron mise hors de possession, le briefe fuit adiudge bone sans nosmer del patron. Si Quare impedit soit port vers le patron et incumbent, & le patron mourust pendant le briefe, le mort del patron nabatera le br̃, coñ est adiudge in 9.H.6.31. car la sont deux mischiefes; vn si briefe abatera le disturbance serr̃ dispunie, & coment que le briefe fuit bien commence, vncore le plaintife serra sauns remedie, car fault disturber: & del auter part lauter mischiefe est, si le briefe nabatera mes le plaintif proceedr̃ al iudgement et execution, le verie patron serr̃ hors de possession: & intant que in lun caz, si le droiturel patron serra mise hors de possession, il ad remedie per briefe de Droit, a recontinuer laduowson, & in lauter cas si le br̃e abatr̃ le plaintife serr̃ sans remedie, quel serr̃ le greinder mischiefe, & a cest cause le briefe estoier̃, & ne serr̃ abate: et oue ceo accordont 7.H.4.26.b. 13.H.8.13. 9.H.6 57. Et Quare impedit bien commence per diuers, come coparceners ou ioyntenants &c. ne abatera per le mort del vn de eux; ne Quare impedit port per baron & feme nabatera per mort la feme, pur ceo que auterment le plaintife, si les 6. moyes sont passe, serr̃ sauns remedie, come les liures sont in F.N.B. 35.b. 38.Ed.3.43. 37.H.6.11. 7.H.4.19. 14. H.4.12. 9.H.6.30.57. 1.H.5.13. 17.Ed.3.11. 7.Ed.3.304. Mes si le Roy present, & son clerk est admit & institute &c. la le Quare impedit port estre port pur necessitie vers leuesq̃ ou lencumbent, car ne gist vers le roy, illint del pape sil vst vsurpe, 12.H.8.12. 4. H.7.15.&c. Vide 47.E.3.fol.11. Le roy port Quar̃ impedit vers Walter Dawotre del glise de Retfield, & fist son title, entant que Hammond euesq̃ de Rochester ad pse̅nt al dit esgr̃ p vsurpatiõ esteant void (laduowson de q̃ de dr̃t appent al 3. files et hrs) son clerke, q̃ fuit admit, institute, et induct, & pus lencumbent resigne, & le successor pse̅nt aut, q̃ fuit admit, institute, & induct, & il mourust, p que appent al Roy a pse̅nt, intant q̃ leuesq̃ ad gaine cest aduowson a luy & ses suer̃ sans conge, p q̃ lauowson fuit deuenus in mortmaine: le def. plead, q̃ il est par son del pse̅ntm̃t de William Wycelesey predecessor leuesq̃ que ore est, Thomas per nosme, illint q̃ le patronage est in Thomas, le quel, nous intendõ, couient estre nosme in le briefe, p que nent entendomus my, q̃ nre seignior le roy a cest briefe, in quel patron nest my nosme, voille estre responde; car

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nous intendomus, que Quare impedit ne gist my deuers lencumbent sole, sans nosmer le patron, ou est expressement monstre, que la est patron que poit pleader in barre del pl. ou auter chose, de ouster le Roy del action, que ne gist in le comisans del incumbent a pleader: et fuit adiudge, que le briefe le Roy fuit bone vers lencumbent sole, pur ceo que il poit doner, per lestatute, quel respons il voit sole, in maintenance de son possession de son esglise, et le ore eueskz que est successor nest pas disturber, car le defendant vient eins per le predecessor, & pur ceo ne serr̃ charge oue dammages ou costs. Et puis le plaintife John Hall perceiuant, in le principall case, le resolution del Court, discontinue son suit, & pde son p̃sentation illa vice.

Cases de Quare impedit.

Paschæ 40. Elizab.

Sir Hugh Portmans case.

IN Quare impedit, per Sir Hugh Portman ẽs larcheuesqz de Canterbur̃ et Mountgomerie Clerke, ad eccleſiam de Chelſey, in comitat̃ Somerſet, & fuit ſon title per reaſon dũ graũt dun procheine auoidance vnica vice, diuers poyntz fuer̃ reſolue. ¶ 1. Si le plaintife in Quare impedit ſoit nonſue apres apparance, ceo eſt peremptorie, & bone barre in auter Quare impedit, coment que ſoit port deins 6. moyes; & le reaſon de ceo eſt, pur ceo que le defendãt ſur title fait (per q̃ il deueigne actor) auera briefe al eueſqz de admitter &c. ſon Clerke in meſme leſgliſe &c. que eſt bõe barre in auter Quare impedit, et oue ceo accord̃ 19. Ed. 4. 9. 22. H. 6. 44. 45. 33. H. 6. fol. 1. 55. 20. Ed. 4. 14. 21. Ed. 4. 2. b. &c. F. N. B. 38. b. Meſme la ley, ſi le plaintife in Quare impedit diſcontinue ſon ſuit, le def. ſur title fait auera briefe al eueſqz, & per conſequence ceo eſt peremptorie: et oue ceo accord̃ 31. H. 6. 15. Mes ſi le briefe de Quare impedit deins les 6. moyes abate pur faux latine, ou inſufficiencie del forme, ceo eſt le default del Clerk, & ne ſer̃ peremptorie al plaintife, ne le defendant ſur ceo auera briefe al eueſqz, mes le plaintife poit auer nouel briefe de Quare impedit, et oue ceo accord̃ 3. H. 6. 3. 31. H. 6. 15. F. N. B. 38. b. Vide 34. Aſſ. pl. 9. ſemblable. Iſſint ſi le bre abate p le miſnoſmer del plaintife ou def. ſi le pl̃ confeſſe ceo, le defendant naũa briefe al eueſqz, car ẽ poit eſtr̃ le default del Clerke in eſcrier de ceo: et oue ceo accord̃ F. N. B. 38. Vide 31. H. 6. 15. Mes ſi le pl̃ ſoit fait Chiualer pend̃ le bre, le bre abatera, & le defendant naũa bre al eueſqz, & per conſequence ceo eſt peremptorie, car (come nous veiomus per common experience in ceux iours) ceo eſt lact del pl̃, & nul eſt compel ou cohert a ceo.

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Trinitat. 27. Eliz. rott 320.

Baskeruiles case.

EN Quare impedit in Communi banco le case fuit, que, ann prim Mar, title a plent per laps fuit deuolue al Roign al esglise de Culep in le coũtie de Heref. Sir Nicholas Arnold le patron prelent vn Euans, que a ceo fuit admit, institute, & induct, & mozuſt, et, fi le Roign ad pard ſõ titl' a plent per lapz ou nemy, fuit le queſtion. Et fuit adiudge, que le Roigne ad pard ceo, car le Roigne nad que vnam & vnicam preſentationem hac vice, que ne poit eſtre extend al 2. auoidance: car negligence a prelent perdt le ſubiect vn preſentment ſolemt p laps, et nemy diuers: et ſi le Roigne ad primã & proximã aduocationẽ graunt a luy, el ne poit prend le 2. Et auterment graund inconuenience enſuet al patron, car le Roigne poit abſteiner de prelenter, & permitt diuers a prelent, per vſurpat lun aps aut, et pnder ſon tourne qnt el voit, & le patron poyt eſtre in manner per ceo diſherite. Et leſtatute de Prærogat Regis, quod nullum tempus occurrit regi, eſt deſtre intend, qnt le Roy ad eſtate ou intereſt certaine et permanent, et nemy qnt ſon intereſt eſt ſpecialment limitt, quant et coment il ceo prẽdra, et nemy auterment; car la temps eſt le ſubſtaunce de ſon title, & in tiel caſe tempus occurrit regi. Et iſſint fuit auterfoits adiudge Paſc. 28. El. Rott 412. in Communi banco, int Beuerly pl, et larcheueſq de Cãterburie, & Gabziel Coznwal def. pur leſglise de Soũby, in com Lincolne.

Hillar̃ 43. Eliz. in Communi Banco,

Rott' 1108.

Maunds case.

IN Repleuin inter Maunde & Gregorie le defendant mẽe, que vn rent charge, hors dun mease et certaine tres, fuit graunt per fait a vn & a ses assignes, pur son vie, pro consilio impendendo, paiable annuelmẽt al 4. feasts, & pur default de paiñt, si soit demaund, q̃ serr̃ loyal al grauntee et sez assignez a distreiner, le grã=tee assigne le rent al auowant, le teñt attorne, lassignee sur le tre demaund le rent puis le iour, et pur default de paiment distraine & auowe, & q̃ le pl̃ demurr̃ in ley. In cẽ case fuit resolue. ¶ 1. Que rent graunt a vn & ses assignes, pro consilio impendendo, poit estre assigne quster p̃ le rp̃s parolx del grauntor, que graunt ceo a luy & ses assignes; car modus & conuentio vincunt legem. ¶ 2. Que in cest case ne besoigne pur lassignee a demaunder le rent al iour, come il doit in case de reentrie (car la tout lentereſt ou estate serr̃ defeat) ou qñt alcun summe nomine pœnæ serr̃ forf. in ambideux ceux cases demaund couient estr̃ fait p̃cisement al iour, vn conuenient temps deuant le coucher del soliel, in lũ case in respect del condic̃, & in lauk in respect del penaltie. Mes in case de distresse, cestuy que ad le rent poit demaunde ceo a q̃l tẽps q̃ il voit, car nul p̃de ou penaltie sur ceo insuera, mes soleñt remedie a vener a son rent q̃ est arere, et q̃ ẽ due a luy: et issint fuit adiudge in Communi banco. Mich. 40. & 41. Eliz. inter Stanley & Read, ou le case fuit, q̃ vn rent charge fuit graunt, paiable a certaine iour, & si ceo soit a=rere & demaunde, q̃ bñ lirroit al grauntee a distrainer; lauowant monstre, coñt q̃ il fist demaunde al iour, le pl̃ trauers, q̃ il ne fist demaund a ñ le iour (entendant a faire le iour parcel del issue) sur q̃ le def. demurre in ley, et fuit adiudge encounter le pl̃; car si le de=maund fuit in alcun temps pus̃ le iour & deuãt le distresse, suffist. ¶ 3. Fuit resolue, que si home q̃ ad rent seck, payable annuelmẽt

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al feaſt de Paſche, ad vn foits ſeiſin del rent, & le feaſt de Paſche paſſe, & nul tend ou dõ fait del rent, il poit, conũt q̃ ſoit aps le iour de paiment, veign̄ al tre, & la dõe le rent, et, conũt q̃ tenũt del terr̄ ne ſoit la, vn̄, ſur tiel demaund ſi nul ſoit prſt a paier le rent, c̄ eſt denier in ley, ſur q̃ ceſtuy q̃ ad le rent auer̄ Aſſiſe, in tant q̃ nul penalty ſur ceo inſuera, mes ſolemnt dañ remedie de recouer ſon rent et lez arrerages, oue damages & coſts, & oue c̄ accord̄ Litt̄ fol. 51. & liure Dentries fol. 79. b. 29. Aſſ. p. 52. Mes in meſme le caſe, ſi le tenũt ſoyt al darreine inſtant del feaſt de Paſche prſt ſur le terre a payer le rent, & ceſtuy q̃ ad le rent ne aſcũ pur luy vient a demañder ou receiñ ceo, la ceſtuy q̃ ad le rent ne poit ven̄ in abſence del tre tenũt & dõe ceo, & iſſint faire luy vn diſſeiſor, et rend̄ damag̃ & coſts ſans aſcũ default in luy: Mes in tiel caſe, cẽy q̃ ad le rent, pur ceo que default fuit in luy doit fair̄ dõ de ceo ſur le tre al prſon del tenant, & ſil ne poit luy troũ ſur aſcũ pt del tre hors de que le rent eſt iſſuant, donq̃s in tiel caſe il couient dõer le rent al prcheine feaſt de Paſche oue touts les arrerages, et conũt q̃ c̄ ſoit in labſenc̄ del tenãt, vn̄ c̄ amounta a vn denier in ley, & ſur c̄ ceſtuy q̃ ad le rent recoña touts les arrerages, damages, et coſts.

Diſconti-

Discontinuance de proces, &c. per mort la Roigne.

Trinit. 1. Iacobi.

LE resolution des Justices pur le mort le roign Elizabeth **concernant discontinuance des proces &c. Sont deux manners de resummons & reattachments lun generall, lauter special. Leffect de generall est, que le Roy direct briefe** (exempli gratia) **al Banke le Roy in cest forme,** Mandam⁹ vobis, quod ad sectam nostram omniumque ligeorum populi nostri, qui prosequi voluerint extra & super omnia siue aliqua recorda, placita, breuia, præcepta, processus, billas, loquelas, appella, fines, & alia memoranda quęcunque in Curia nostra coram nobis existentia, vel in posterum coram nobis prouentur, omnimoda breuia resummonitionum, reattachiamen̄, & omnium aliorum processuū pro nobis & dictis ligeis populi nostri in hac ꝑte habend', secundum bonas intentiones & proposita subscripꝰ, mutatis mutandis, prout casus requirit, secundum discretiones vras adiudicetis. **Speciall resummons est de tiel forme.** Rex vic' Salutem. Resummoneas per bonos summonitores A.B. qđ sit corā nobis in cr̄o &c. vbicūq; tunc fuer̄ in Angl', audit̄ record' et iudiciū suū de loq̄la quæ fuit in cur̄ dn̄i Hen. nuper regis &c. ita quod loquela illa tunc sit in eodem statu quo fuit in pristina curia prædicti nuper regis in octabis &c. vltim̄ præterit̄, de quo die loquela prædicta adiornat̄ fuit vsq; &c. tunc proxim̄ sequen̄, ante quem diem loquela prædicta remansit sine die, eo quod prædict nuper Rex diem suum clausit extremum. **Et nota sur le generall resummons loriginall & le issue (si ascun soit ioyne) est reuiue, car ceo est pleine record, & doit estre entre, mes le proces deuant le issue ioin̄, ne le vouch. ne le garnishm̄t, &c. ne ꝑ t̄ reuiue sans especial b̄ recitāt tout le special ꝓceding.** 5. H. 7. 40. 9. H. 6. 41. 13. E. 4. 1. 1. E. 5. fo. 2.

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Et appiert per le liure de Entries tit̃ Reattachment 499. que si issue soit ioyne, & Jurie returne, & iour done pur triall, deuant q̃l iour le Roy mozust, vncoze per speciall resummons tout serra reuiue, car le Jurie fuit returne de recozd, & le recozd de ceo fuit fait plein & perfect: & oue ceo accozd̃ 3.Ma.118.Dier. Vide 21.E.3.44. contr̃ in case de aide prier, car la le Jurie nest reuiue come la est ten^{9}, mes Venir̃ fac' de nouo ser̃ agard. Et est ascauoir, q̃ le def. ne vnq̃ auer̃ resummons ou reattachmẽt, pur c̃ q̃ il nauoit ne poit auer summons ou attachm̃t: et pur c̃, al common ley, si vn verdict vst passe pur le def. & deuant le iour in banke le roy mozust, in cẽ caz le pl̃ est discontinue, & le def. poit p Certiorari remoue le recozd, & com̃t que les parties ne vnq̃s pleadr̃ ascũ plea, vnc̃ le def. couient suer Scire facias, et ꝑ c̃ dam̃ iudgem̃t, mes sans Scire fac' il nauer̃ iudgem̃t, pur ceo q̃ les parties nom̃t iour in court, & le Scir̃ fac' reuiũa le recozd, & donera iour al parties, encom̃r lopinion de Littleton 10.Ed.4.13. com̃t q̃ il dit que illint fuit adiudge, q̃ le defendãt in tiel caz maintenant aueroit iudgem̃t. Mes al common ley per le demise le Roy le plea fuit discontinue, & le proces q̃ fuit agard, & nient returne deuant le mozt le roy fuit pde: car p le br̃e del pdecessor rien poit estre execute in le temps del nouel roy, sinon q̃ il soit in especiall cases; car p le mozt le roy, non solem̃t les Justices de lũ bank & de lauk, & Barons del Exchequer, mes les viconts auri & eschetozs, & touts Commissions de Oyer & Terminer, Goale deliuery, & Justices de Peace, sont determine per le mozt le predecessor que eux fist: & pur le remedie de ceo fuit lestatute de 1.Ed.6.cap.7. fait, que puruieu que per le demise le Roy ascun action, suit, bill, ou plaint, that shall depend betweene partie and partie, in any of the kings Courts, and other Courts of record shall not in any wise be discontinued or put without day, but that the proces, pleas, demurrers, and continuances, shall stand good and effectuall, and bee prosecuted and sued forth, in such manner and forme, and in the same estate, condition, and order, as if the same king had liued. Jssint que oze, si ascun iudiciall brieue ou proces in ascun court de Recozd fuit agard in temps del predecessor, ceo oze poit estre execute in temps del successour, 1.Elizab.165. accozdant, Mes vncoze cest act nad prouide remedie pur touts les mischiefes. Car ¶ 1. si le oziginall ne soit returne deuant le mozt le Roy, ceo est pde, car les parolr sont dependant in ascun Court: mes, in Appeale de mozt, si le brieue soit deliuer al vicont deins lan, & deuant le returne de ceo, ou q̃ le vicont ad fait riens, le Roy soy demist, & lan expire deuant le iour del returne, in cest case le common ley donera remedie al plaintif, ꝑ, vn Certiorari al vicount retournable in bank le Roy, & sur ceo

1.El.Dier 165.
1 E.4.3.
1.E.5.1.
4.E 4.44.
1.H.7.2.

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le pl̃ auera reattachment, coment que ceo ne vient eins per le returne del vic̃ mes per Certiorari ; & le reason est, pur necessitie del matt̃, car autrement le plaintife, que loialment purchase son br̃e deins lan sans ascun default in luy, perdra son appeale lan esteant ore passe, et pur ceo intant q̃ per act in le ley br̃e est discontinue, le ley donera meane a reuiuer ceo, au fine que le partie ne sra sauns remedy. Issint si home purchase Formedon vers pnor des profits deins lan apres title accrue, si deuant le returne del briefe &c. le Roy soy demist, le br̃e serr̃ remoue in le Common bank per Certiorari, et sur ceo il auera resummons, pur le mischief, com̃ est tenus 10.E.4.13.b. & 14.a. ¶ 2. Per le mort le Roy les offices de vicõts sont determine, et pur ceo tanqz nouels patents de lour offices rien poit estre fait: mes in Londres & auters lieus on sont vic̃ de inheritance per chr̃e, la ils poient execute ascun proces ou iudiciall br̃e agard in temps del predecessor. ¶ 3. In le countie Court & autiels Courts, queux ne sont Courts de record, ceo remaine come fuit al common ley, car les parolx del act sont, in any of the Kings Courts, or other Court of Record. Auxy lestatute extend solement al actions, suits, &c. inter party & party, & pur ceo, ceo nextend al cases ou le Roy est party : & oue ceo accord̃ Stamf. 98.b. et pur ceo est necessarie a scauer q̃ le common ley est in tiels cases. Si infornation de intrusion, ou auter infornac̃ soit preferre, ou merement pur le Roy, ou tam pro dño rege quam pro seipso, et le defendant plead al issue, ou demurrer soit ioyne, & puis le roy morust, tout est abate & pdue, forsqz solement le infornation, et ceo estoiera : car lentrie in Leschequer est (monstrant le continuance et mort le roy H.8.) per quod loquela remansit sine die, & dominus Edwardus ipsum nuper regem in regimine huius regni secessit, ac regimen eiusdem regni super se assumpsit, super quo concordatum, quod prædict' defendens attachietur de nouo ad respondend' dicto domino regi nunc, et sur ceo attachmẽt est agard, sur le returne de quel le defendant appiet̃ et pleadet̃ de nouo : car coment que voier est, q̃ le roy in genere ne morust (car est nul interregnum) uncore in hoc indiuidio, s̃. Henry le Roy, & Edward le Roy &c. morust. Et ceo appiert per record Hill' anno 6. Ed.6. Rott' 50. Infornation de intrusion fuit preferre vers John Schrymsal esq. pur intruding in le Mannor de Offeley, in le countie de Stafford. Simile recordum Michael' anno 6.E.6. Rotũ 15. infornation preferre p Attourney le Roy pur le Roy solement vers Michael Harecourt sur lestatute de Maintenance: Hill' 5.E.6. Rotũ 23. in Scaccario in infornation sur lestatute de 32.H.8. pur buying de titles, tam pro dño rege quam pro seipso, & apres issue le roy morust, & def. appiert sur

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le attachment, & plead de nouel: simile p idem Recordum Roꝝ 24. simile per idem Recordum Roꝝ 54. simile Mich. 1. & 2. Ph. & Mar. in Scaccario Roꝝ 131. in informacion de intrusion vers Rich. Alford, que appiert & plead vn speciall plea, sur que fuit demurr̃ in ley, et le demurr̃ enter & puis le roigne Mary morust, & sur ceo Subpena issuist dappearer de nouo, retornable termiñ Hill' 1. Eliz. q̃ est in ligula breuium ibidem, & sur ceo le defend̄ plead auter spec̃ plea, sur que issue fuit prise. Et nota a tiel effect come les presidents sont in leschequer, issint ils sont auxi in banke le roy, quãt a toutz manners de informations. Simile Paschæ 5. E. 6. Roꝝ 38. ou in populer action le roy morust apres demurr̃ sur le euidence, & deuant iudgement, & le defend̄ plead de nouo. Sur queux record̄ le ley appiert destre, que in touts les dits cases le roy esteant mereñt partie, ou quant le informacion est tam pro dño rege quam pro seipso, quant le roy morust deuant iudgement, tout le proceding sur le informacion est tout ousterñt abate et pde, quia Rex Henricus &c. fuit pars qui mortuus est: mes le informacion ou inditement, que est record pur le roy estoiera, & le dit defend̄ serra chase a responder a ceo de nouo, et riens estoier̃ forsq; informacion, car ceo est record & ne poet abater. Et le ley ad graund reason in ceo, car sur pluiors penall statutes le suit est destre commence deins certaine temps, & pur ceo, si le informacion ou inditement ne continuer̃ in force apres le mort le Roy, loffence serra dispunie per le mort le Roy, que est le act de dieu. Mes si le Roy port originall briefe come de Quare impedit &c. la per le mort del roy la briefe abater̃, quia le roy pur que iudgement serra done, est mort, et apres le mort le roy, que est partie, nul proceste poet estre agard sur le originall, come poet estre sur le informacion ou inditement. Vide Michael. 3. & 4. Elizab. 206. Vide 4. Edw. 4. 43. & 44. & Brooke tit̃ Offices 25. Si vn soit indite in temps del vn roy et plead al issue, & puis le roy morust, il pleadra de nouo, come poies veier in le case de Edward Smith, que plead al issue sur inditement de felonie in Mid̄ in 3. & 4. Phil. & Mar. in banke le roy, et puis le mort le roigne Marie replead in 3. & 4. Elizab. et fuit acquite. Jssint Clement Palmer esteant arraigne in banke le Roy sur vn nonsuite in appeale al suit le roigne Trinitat̃ 4. & 5. Phil. & Mar. et plead al issue, le roigne Marie morust, & Michaeł 1. & 2. Elizabeth. il replead. Vide Paschæ 1. Edward. 5. trauers dun office in le Chauncerie, et le record mise in banke le roy, et puis le Roy morust. Et per le dit statute de 1. Edward. 6. est purvieu, That in all cases, where any person or persons heretofore haue been, or hereafter shall be found guiltie of any manner of treason, murder, man-

slaughter, rape, or other felony whatsoeuer, for the which iudgement of death shall or may ensue, and shall bee repried to prison without iudgement &c. that the Iustices of Gaole deliuerie, shall haue full power and authoritie, to giue iudgement of death against such person so found guiltie and repried &c. Deuant cest act, al cõmon ley, si home ad estre indite & conuict p verdit ou confession deuant ascun commissioners, & deuant iudgement le roy mozust, in cest case nul iudgement puit auer estre done; car le Roy, pur que iudgement serra done, est mozt, & lauthozitie de les Judges, que donet le iudgement, est determine: & cest act remedie ceux speciall cases; mes touts suits le roy per oziginall, bill, infozmation, ou inditement pur ascun auter offence remaine al common ley.

Mich

Mich. 2. Iacobi.

Caſe de fine leuy per le Roy tenant *in taile, &c.*

LE Roy fuit informe, q̃ diuers mañors & terres fuer̃ intaile al Gilbert de Clare countee de Gloc̃, & le Roy, q̃ ore eſt, eſt heire del corps del dit Gilbert inheritable al dit tre, alcũ de q̃ux mañors le Roy & auters de ſes progenitors, pur bone conſiderac̃, ount grant a diuers ſubiects, touts queux grants (come ſuit pretend) fuer̃ in reſpect del dit auncient eſtate taile ouſterin̄t void. Le Roy que ore eſt, de ſon grace & bone volunt a ſes ſubiects, & pur lour quiet & repoſe, require Popham chiefe Juſtice & Coke lattorney generall, a conſider coment p̄ ley il poet eſtablier leſtate des dits patentees & auters claimant delouth eux, encounter le dit eſtate taile. Sur q̃ ils ſeueralin̄t in le vacation temps conſider ſur ceſt point, & puis, ſur conference, ils agreont in vn, que le Roy eſteant tenant in taile p̄ done fait a alcun de ſes aunceſtors eſteant ſubiects (come le queſtion eſt moue) poet, p̄ fine leuie ſur grant & render, barre leſtate taile; & ceo pur diuers reaſons. ¶ 1. Intant q̃ le Roy eſt lie per leſtatute de donis conditiõ, come eſt adiudge in le ſeignior Barkleys caſe, in Pl.com. 240. p̄ quel act le roy eſt reſtraine de alienation, car eſt purvieu p̄ meſm̃ le act, quod finis ipſo iure ſit nullus, reaſon voet q̃ le Roy p̄endra benefit del acts de 4. Hen. 7. & 32. H. 8. q̃ inable tenant in taile a barrer ſes iſſues: car eſt agree in tout noſtre liures, q̃ le Roy p̄endra benefit daſcun act coment q̃ il ne ſoit noſm̃, 12. H. 7. 21. 35. H. 6. 60. Seignior Barkleys caſe. Pl.com. 240. & ſerra dure, que le Roy, eſteant iſſue in taile dun done fait al ſubiect, ſerra in peior condic̃, q̃ ſil nad eſtre Roy. ¶ 2. Eſt graund diuerſitie, quant le Roy claime in reſpect de ſon naturall capacitie, come heire de corps, p̄ formam doni come heire del corps dun ſubiect, car la il ſerra ly p̄ vn act de parliam̄t, (& ceo fuit le p̄incipal reaſon del iudgem̄t in le caſe del ſeignior Barkley, ou le done

fuit al roy H. 7. & ags heires de son corps.) Et quant le roy claime chose in respect de son royall & publique capacitie, la vn generall act ne liera luy, sinon q̄ il soit expressm̄ nosm̄, sinō q̄ il soit in especiall cases. ¶ 3. In le case al barre, le barre q̄ lestat de donis condic' operat, est vers les issues in taile; car tenant in taile mesm̄ sans laid del act poet barrer luy mesm̄ (& issint poet le Roy auxi per spec̄ grant.) Donqs les issues in taile, al tempz del fine leuie p̄ le roy, sont forclos subiects qux sont lie p̄ lez ditz actz, & lestate taile barre p̄ le fine & p̄clam̄. Et nota, q̄ le act de 32. H. 8. recite, q̄ (for auoyding of all strifes and controuersies) quel paroll generall (all) include auxi le case del roy. Et fuit obserue, q̄ lestatute de donis cōditiom̄ q̄ lia le roy, dit, quod dominus Rex perpēdens, quod necessariū est in casibus prædictis ponere remedium, statuit, quod voluntas donatoris &c. & lestatute de 4. H. 7. que done poyar a docker lestate taile dit, The king considereth that fines ought to be of greatest strength to auoid strifes and debates, and to be a final end and conclusion: It is enacted that after the fine engrossed and proclaimed &c. the same fine shal conclude priuies &c. deins queux parols, les issues le roy sont include. Auxi lestatute de 32. H. 8. puruieu, That all fines leuied of any lands intailed to the person so leuying the same fine, or to any of his ancestors &c. et Gilbert de Clare fuit in proprietie de speach auncestour al roy, et issint deins lexpres letter del act. Mes semble a eux q̄ apres le render fait est necessarie dauer lres patent̄, a graūt al conisee, p̄ expres parols, q̄ il poet enter in la terre: car auterm̄t, le fine esteant executorie sur graunt et render, poet estre doubt, si il conusee sans alcun tiel graunt poet enter sur le roy. Et puis Mich. 5. Iacobi apres le mort de Popham, cest opinion, sur consideration & conference ewe oue Fleming & Coke chiefe Justices et Tanfield chiefe baron, fuit affirme pur bone ley, pur les reasons et causes auandits. Et diuers fines ont estre leuy p̄ le roy accord̄ a cest resolution.

Neuils

Mich. 2. Iacobi.

Neuils case.

EN meisme cestuy terme cest case per maundement le Roy fuit propound a touts les Justices. Anno 21. R. 2. Rafe Neuil seignior de Raby fuit per lres patents desouth le grand seale create countee de Westmerland a luy & a les heires males de son corps, quel Rafe p Margaret Stafford son primer feme adis-sue Rafe countee de Westmerland, a que Charles iades countee de Westmerland fuit lineall heire male del corps del dit Rafe le primer donee & le dit Rafe le primer donee p Joan file de John de Gaunt duke de Lancastre auoit issue George seignior Latimer (car touts son eigne freres sont morts sans issue male) de q̃ est linealm̃t discend Ed. Neuil, q̃ ore est le pluis procheine issue male al dit donee: & puis Charles countee de Westmerland fuit attaint per vtlag & per parliament de haut treason, & deuie sans issue male, & ore le dit Ed. Neuil claime destre countee de Westmerland. Et in cest case 3. questions fuerõt moue a touts les Justices dengliterr̃. ¶ 1. Si le dit limitation del dit dignitie al dit Rafe & ses heires males de son corps soit deins lestatute de donis conditionalibus, ou fee simple condicionell al common ley. ¶ 2. Admittant q̃ ceo fuit estate taile deins le dit statute, si per lattainder de treason lestate taile fuit forfeit, per vn condition in ley tacite annexe al state de dignitie. ¶ 3 Si lestate de dignitie fuit forfeit p lact de 26. H. 8. cap. 13. ou que le dit Ed. Neuill come heire male del corps del primer donee doit estre countee de Westmerland. Et ceux points fuer̃ argue & debate al Seriants Inne in Fleetstreet per le attorney le Roy, & per le councell del dit Ed. Neuill. Et quant al primer fuit obiect que le dit dignitie ne fuit deins lestatute de donis condition̄ pur diuers causes: 1. pur ceo que ceo fuit vn grand dignitie derive del roy come le fountaine de

tout dignitie, & pur ceo nest deins le dit act, q̃ parle soleñt de tenementis, quæ multotiens dantur sub conditioñ, viz. cum aliquis terrã suã dat alicui viro &c. issint cest dignitie ne poet estre include deins cest parol teneñts ou tre. 2. Lestatut dit, in omnibus p̃dict' casibus post prolẽ suscitat̃ huiusmodi feoffati habuer̃ potestat̃ alienãdi &c. mes cest dignitie fuit inherent al sanke del donee, & ne poet estre alien ou graunt, ne puis, ne deuant issue, & pur ceo tiels cases de dignitie fuer̃ hors del mischiefe, les parols, & lentention des feasors del act de donis condic'; & lopinion in Manxels case in Pl. com. grant de chose, q̃ ne concerne terr̃ ou teneñts ne exercible in terr̃ ou teneñts, come vn annuitie, q̃ est psonel, nest deins lestatut de donis condic', et cest dignitie fuit dit fuit psonall et annex al sanke del donee, & p conseqns ne poet estre intaile deins le dit act. Mes fuit resolue p touts les Justices dengliterr̃, q̃ nosñ de dignitie poet estre intaile deins le dit statute; car in le case al barre ceo concern terre, car il fuit fait p lez ditz lres patents countee de Westmerland, q̃ p le cõmon ley est grand conseruator del peace, & Sheriffs sont appell vicecomites, pur ceo q̃ in auncient temps ilz fuer̃ come deputies al coũtees, coñt q̃ ore ceo est chaũge: & pur ceo tiel office de digñ dascũ lieu cõcerne tre, & pur ceo poet estre intaile deins le dit stat̃, come est dit in Pl com. in le dit case de Manxel. Loffice de Steward, Receiuor, ou Bailike de tiel mãnor poet estre entaile deins le dit stat̃, pur ceo q̃ est exercible deins terre: 5. Ed. 4. loffice de Marshall dengliterr̃ fuit intaile, 1. H. 7. 28. estake taile poet este dũ fostership, 18. E. 3. 27. office de seriãcie ou custodie del eglise de Nichol fuit intaile: 32. H. 6. 28. le coũtee de Salop fuit intaile al John Talbot chlr̃, & a les heires males de son corps; & ieo ay vieu vn br̃e de pliaint in añ 27. H. 6. p q̃ Bromflet fuit sũmõ al pliaint p le nosñ de seignior Veley, ouz limitat̃ in le br̃e a luy et les heires males de son corps. Et est a reauoir, q̃ sicom in auncien̄ tẽpz lez Senators de Rome fuer̃ elect a censu, of their reuenues, issint icy in auncien̄ tẽps in cõferring de nobilitie respect fuit eue a lour reuenues, p q̃ lour dignity & nobility poet este supported & maintained: & pur ceo vn chiualer doit auer xx. l. tre p annũ, vn barõ xiij. fees de chiualer & vn quatter, vn coũtee xx. fees de chiualer (car ne fuit ascũ duke deins Englitre, del tẽpz del cõquest iesqz 11. E. 3. & le duke de Cornwall fuit le prim̃er duke puis le cõquest deins Englitre.) Et ceo appiert p le stat̃ de Magna Charta cap. 2. car touts foits le 4. part de tiel reuenue, q̃ est requisite p ley al dignitie, serra paie al Roy pur reliefe: come le reliefe dũ chiualer est v. l. q̃ est le 4. part de xx. l. q̃ est le reuenue dũ chiualer; & le reliefe dũ barõ est C. marks, q̃ est le 4. part de son reuenue, s̃ 400. marks, & include 13. feods

feods dũ chiualer ꝛ vn quarter ; ꝛ le reliefe dũ coũtee eſt C.l. q̃ eſt le 4. part de 400.l q̃ eſt le reuenue dũ coũtee. Et appiert p les recoꝛds del Eſchequer, q̃ le reliefe dũ duke amoũteꝛ a 200.l, ꝛ p cõſequence ſon reuenue doit eſtre 800.l. pannũ. Et ceo eſt le reaſon in noſtre liures, q̃ cheſcun del nobilitie eſt plume in ley dauer ſufficiẽt frankteneint, ad ſuſtinendũ nomẽ & onus. Vide 3.H.6.48. 11. H.4.15. 14.H.6.2. Vide le counteſſe de Rutlands caſe, in le 6. part de mes reports. Vide Cambden fol.107. Necdũ hæreditaria fuit hæc dignitas (ſcilt comitis) verũ cũ Gulielmus Normanus, iam victor, ſummã rerũ in hoc regno adminiſtraret, comites creati ſũt feudales, hæreditarii, & patrimoniales, vt in antiquis cartis videre eſt, de tertio denario comitatus, i. qui de placitis proueñ in eodem comitatu. Et cheſcun baron ꝛ auũt de nobilitie eſt toutz foitz treate daſcun lieu. Et oꝛe, a quel value leꝛ ditz aũciẽt rents in tẽpꝛ H.5. & E.1. a ceſt iour amoũteꝛ, cheſcũ ſcauoit. Et iſſint fuit clereint reſolue, q̃ le dignity in le caſe in queſtiõ fuit deins leſtaũ de donis condic'. Et oue ceſt reſoluũ accoꝛdo diuers p̃ſidents ꝛ lexperiẽce ꝛ pꝛactiſe touts foitz vſe: car le coũtee de Noꝛthũbeꝛ fuit intaile, p le roigne Mary, al Thomas Percy ꝛ a les heires males de ſõ coꝛps, ꝛ pur default de tiel iſſue, q̃ Hẽry ſon freꝛ ſeiſi coũtee, a luy ꝛ a les heiꝛez males de ſon coꝛpꝛ, ꝛ in tiel caſe, p lattaindꝛe de Tho. de treaſon, Hẽry fuit puis ſon moꝛt coũtee de Noꝛthũb. p foꝛce de ſon reñ, ꝛ ſon iſſue enioy ceo a ceſt iour. Iſſint Ambꝛoſe Dudley fuit, p le roigne Eliz. create coũtee de Warwicke, a luy ꝛ a ſes heires males de ſon coꝛps, et pur default de tiel iſſue, q̃ Ro. cõ freꝛ ſeiſi coũtee, a luy, ꝛ a leꝛ heirs males de ſon coꝛps : ꝛ Rob. fuit create coũtee de Leiꝛ, in taile oue tiel limitaũ a ſon freꝛ Ambꝛoſe: ꝛ mults auũt p̃ſidẽts ſont a meſm leffect. Quãt al 2. point fuit reſolue, q̃ comẽt ceſt dignity ſoit deinz leſtaũ de donis conditiõ vncoꝛe p lattaindꝛe de treaſõ (ſi leſtatuũ de 26. H.8. nauoit eſtre fait) ceſt dignitie ad eſtre foꝛfeit. p foꝛce dũ condition in ley tacite annexe al eſtate de dignitie : car ceux que ſont countees ount office de graund truſt ꝛ confidence, ꝛ ſont create pur 2. purpoſes : 1. ad conſulendum regi tempore pacis: 2. ad defendendũ regẽ & patriã tẽpore belli : ꝛ pur ẽ antiquitie ad done eux 2. enſignes a reſembler ceux deux duties : car pꝛimerint lour teſte eſt adoꝛn oue vn cappe he honoꝛ ꝛ coꝛonet, ꝛ lour coꝛps oue vn robe in reſemblance de coũſel : ſecondint ils ſont ſuccinct oue vn eſpee in reſemblãce, q̃ ils ſeiſi foiall ꝛ loyal a defender lour pꝛince ꝛ payꝛs : et de ambideux ceux Bracton ple in ſon 1. liure cap. 8. Comites, viz. ſiue a comitaũ ſiue a ſocietaũ nomẽ ſumpſeꝛ qui etiã dici poſſunt conſules a conſulẽdoꝛ; reges enim tales ſibi aſſociãt ad conſulẽdũ & regẽd' populũ Dei, ordinãtes eos in magno honore, & poteſtaũ, & nõie,

quando

quando accingunt gladijs, i. ringis gladiorum: per que appiert ceux 2. fines, s. counſell ⁊ defence. Donques quant tiel perſon enconſt le dutie ⁊ fine de ſon dignitie, prist non ſolemnt coūſell mes armes auxy enconſt le Roy a luy deſtroyer ⁊ de ē eſt attaint p due courſe del ley, per ceo il ad forfeit ſon dignity per vn condition tacite annexe al eſtate de dignitie, in meſme le manner come ſi teñ in tayle dun office de truſt miſuſe ou non vſe ceo, ceux ſont forfeitures de tiels offices a touts iours per force dun condition in ley tacite annexe a lour eſtates, come eſt tenus in 11. E. 4. 1. 20. E. 4. 5. 6. 39. H. 6. 32. 22. Aſſ. 34. 8. H. 4. 18. 2. H. 7. 11. 14. H. 7. 1. Pl. Com. 370. Neuils caſe. Quant al 3. point fuit reſolue per touts les Juſtices, q̄ ſi ceo nuſt eē forfeit p le common ley, q̄ per leſtatute de 26. H. 8. ca. 13. le dit Charles ad forfeit le dit dignity, car le poix del act ſont, ſhall looſe and forfeit to the Kings highneſſe, his heires and ſucceſſors, all ſuch lands, tenements and hereditaments which any ſuch offendor ſhall haue of any eſtate of inheritance in vſe or poſſeſſion, by any right, title, or meanes: ⁊ ceſt dignitie fuit hereditament, et in ceo le dit Charles auoit eſtate de inheritance, et ou leſtatute dit (in vſe or poſſeſſion) ceo fuit a expreſſer que tout manner de inheritances ſerra forfeit pur treaſon, et in lour iudgements touts inheritances fuer̄ ou in vſe ou in poſſeſſion (car ceſt act ne extend al droits ou titles) ⁊ fuit de neceſſitie a adder ceſt parol vſe, car p le cōmon ley vn vſe q̄ ne fuit forſq; truſt ⁊ cōfidence ne fuit forfeit̄ p attaindre de treaſon. Et quant vn vſe fuit expreſſe, donques le additiō de poſſeſſion fuit neceſſarie, car auterment riens forſque vſes ſ̄ra done al Roy. Et pur ceo fuit reſolue, que annuitie de inheritance ſer̄ forfeit per force de ceſt act per attainder de treaſon, car ceo eſt vn hereditam̄t. Et ceo fuit le primer generall act p q̄ vn eſtate in taile fuit forfeit al Roy pur treaſon. Al common ley deuāt leſtatute de donis condicionalibus, ſi terre vſt eē done a vn ⁊ les hirs males de ſon corps, in ceſt caſe cibñ le donor cōe le donee ad poſſibilitie, le donor dū reūter ſi le donee morust ſans iſſue male, ⁊ le donee dañ power dalener ſil ad iſſue male: Car ſi le donee ad iſſue fits, ore a aſcun intent le condition fuit accōplie, car poſt plem ſuſcitatam il ad poteſtatem alienandi, ⁊ le reaſō de ceo fuit pur ē q̄ il ayant fee ſimple ⁊ ayant iſſue, cō iſſue ne poit auoider lalienation, pur ē q̄ il claime fee ſimple dōt ſon pier poit luy barrer. Et comt q̄ le donee ⁊ cō iſſue auxi aps tiel alienatiō morust ſāg iſſue, vncore le donor q̄ auoit forſq; poſſibility ou cōdition in ley ⁊ nul reuerſion ou eſtate in luy ne poit recoū la tre ꝑ ꝑs lalienee, car p le ayant del iſſue le condicion fuit accomplie a ceſt entent, s. a faire alienation. Mes in meſm̄ le caſe al common ley ſi le donee auoit

iſſue

issue fitz & mozust, vnc̃ le fits nauoit vn absolute fee simple in luy, mes soleñt m̃ le power q̃ son pier auoit, sc̃it, dalieñ, & si tiel issue mozust sans issue, & sans alcũ alienac̃ fait, le t̃re reũ̃t al donoz, cõe Brian tient 12.E.4.3.& 18.E.3.46. per Huse: car collaterall heire, que nest del cozps del donee, nest deins le fozme del done, le limitation esteant al hẽs males del cozps del donee, q̃l limitation des heires males del cozps, exclude touts collaterall hẽs a inheriter: mes le policie del ley tuit, a doñ poyar aps issue dalieñ, pur deux causes; lun, q̃ lestate dũ purchaser ne serr̃ auoid p vn remote possibilitie, s̃, si le donee & son issue auxy mozer̃ sans issue, 2. sil ayant fee simple nasa poyar aps issue dalieñ, c̃ serr̃ in mann̄ vn ppetuitie & restraint dalienac̃ a touts iours, q̃l le cõmon ley pur mults causes ne voille pmitt̃, & in 4.H.3. tit̃ Formedon 64 est adiudge, q̃ ou terres fuer̃ done in frãkmariage, & les donees auoient issue & mozont, & puis lissue mozust sans issue, q̃ son collaterall hẽ ne inheriter̃, car le doñ recouer̃ la t̃re in Formedon in reuerter: & in le dit case, si le donee ad issue deux fits & mozust, & le eigne fits ad issue file & morust sans issue male, le puisne fitz inheriter̃ vn fee simple p formam doni al cõmon ley: issint si tres fuer̃ done al vn & a ses hẽs femalez de son cozps, & il ad issue fitz & file & mozust, la file inherit̃ estate in fee simple p formam doni. Et nota bene, lestatute de donis conditionalibus ne create estate taile, mes de tiel estate q̃ fuit fee simple cõditionel, & discendible in tiel fozme al common ley, cõe ozr p lestatute le t̃re discender̃: & le sole mischiefe fuit, q̃ le donee aps issue auoit poyar dalieñ in disherison de ses issues, & barr̃ del reuersion: mes appiert p le dit act, q̃ cõt̃ q̃ le donee auoit issue, vncozr il nauoit absolute fee, issint q̃ le collaterall hẽ del issue inheriter̃, car les parols del act sont: Et pr̃terea cum, deficiente exitu de hm̃odi feoffatis, tenementum sic datum ad donatorem vel ad eius hæredes reuerti debuit, p formam in carta de dono hm̃di expressam, licet exitus, si quis fuerit, obijsset, p factum tamen & feoffamentũ &c. excluſi fuerunt hucusque de reuersione &c. p q̃ appiert, q̃ si le hẽ in taile deuie sanz issue, & sans alcũ alienac̃ fait, q̃ le t̃re reuerter̃ & p consequence ne discẽder̃ al collateral hẽ. 30.E.1. tit̃ Formedõ 65. Si donee in taile alien deuant lestatute, & puis ad issue, & puis lissue deuie sans issue, le t̃re reuerter̃; car il nauoit poyar dalieñ al temps del alienac̃, mes tiel alienac̃ barr̃ lissue, cõe est adiudge in 19.E.2. tit̃ Formed' 61. pur ceo q̃ il claim̃ fee simple. Nota bene, ceux rulez vnc̃ tient lieu in case de graũt de annuitie a vn & a les hẽs males de son cozps, & a touts auk̃ inheritances, q̃ ne sont deins le stat̃ de donis conditionalibus.

Hillar̃

Hillar̃ 2. Iacobi.

Penall Statutes.

EN meſm̃ ceſtuy terme ſur lr̃es direct al Judges, dauer lour reſolution concernant le validitie dun graunt fait per le Roigne Eliz. deſouth le graund ſeale, del penaltie & benefit dun penal ſtatute, oue power a diſpenſer oue le dit ſtatute, & a faire garrant al Seigniour Chauncelor, ou garden de graund ſeal, a fair quant des diſpenſations, & a q̃x il a luy pleiſt, & ſur graund conſideration & deliberation per touts les Juſtices Dengliterre fuit reſolue, que le dit graunt fuit tout ouſterm̃t enconter ley. Et in ceſt caſe ceux points fueront reſolue. Que quant vn ſtatute eſt fait per Parliament, pur le bien publike del Realme, le Roy ne poit done le penaltie, benefit, & diſpenſation de tiel act al aſcun ſubiect, ou a doner poyar al aſcun ſubiect a diſpenſer oue ceo, et a faire garrant al graund ſeale pur licences in tiel caſe deſtre fait: car quant vn ſtatute eſt fait pro bono publico, & le Roy (come le teſte del bien publique & le founteine de iuſtice & mercie) eſt per tout le Realme truſt oue ceo, ceſt confidence et truſt eſt cy inſeperablement adioyne & annexe al royall perſon del Roy, in cy haut point de ſoueraignte, q̃ il ne poit tranſferre ceo al diſpoſition ou poyar daſcun p̃iuat perſon, ou al aſcun p̃iuat vſe: car ceo fuit commit a le Roy per touts ſes ſubiects, pur le bien publique. Et ſil poit grant le penaltie dun act, il poit grant le penaltie de deux, & iſſint in infinitum. Et tiel graunt daſcun penal ley ne vnques fuit vieu in noſtre liures, ne deuant ceſt age aſcun tiel graunt fuit vnques fait: mes voier eſt, que le Roy poit (ſur aſcun cauſe mouant luy, in reſpect de temps, lieu, ou perſon, &c.) faire vn non obſtante

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a diſpenſer oue aſcun particular ꝑſon, que il ne incourgeᵗ le penaltie del ſtatute, & ceo accordᵈ oue noſtᵉ iuges: Mes le Roy ne poit committe le eſpee de ſon iuſtice, ou le huille de ſon mercie, concernant aſcun penall ſtatute, al aſcun Subiect, come eſt auantdit. Fuit auxy reſolue, que le penaltie daſcun Act ne poyt per aſcun grauut le Roy eſte leuie, forſqʒ ſolement ſolongʒ le purpoꝛt & puruiew del Act; car le act que done le penaltie doit eſte purſue tantſolement, en le ꝓſecution & leuying de ceo. Et grauud inconuenience ſur ceo inſuera, ſi penall leyes ſerront tranſferre al ſubiect. 1. Juſtice per ceo ſerra ſcandalize; car quant tiels forfeitures ſont graunt, ou ꝓmiſe deſte graunt deuant q̄ ils ſont recouer, ceo eſt le cauſe de pluis violent & vndue ꝓceeding. 2. Quant eſt ouertment conus, que le forfeiture & penalty del Act eſt graunt, ceo eſt graund cauſe q̄ le act meſm̄ neſt pas executе; car le Judge, & Jurors, & cheſcun auter eſt per ceo diſcourage. 3. Sur ceo enſueroit, que nul penaltie ſerra ꝓ aſcun de Parliament done al Roy, mes limitte a tielx vſes, oue q̄ux le Roy ne poit diſpenſer. Et ſur ceo, diuers, queux auoyent ſue dauer benefit de certeine Penall leyes, fuer̄ ſur ceſt reſolution denie. Et le certificat de touts les Iuſtices Dengleterre concernant tielx graunts de penall leyes & ſtatutes fuit in ceux poix. May it pleaſe your Lorᵖˢ. we haue (as we are required by your honourable Letters of the xxj. of October laſt) conferred and conſidered amongſt our ſelues (calling to vs his Maᵗⁱᵉˢ. Counſell learned) of ſuch matters as were thereby referred vnto vs, and haue thereupon with one conſent reſolued for Law and conueniencie as followeth. Firſt, That the proſecution and execution of any penall Statute cannot be graunted to any, for that the Act being made by the policie and wiſdome of the Parliament, for the generall good of the whole Realme, and of truſt committed to the King, as to the head of Juſtice, and of the weale publique, the ſame cannot by Law bee transferred ouer to any Subiect; neither can any penall Statute be proſecuted, or executed, by his Maieſties graunt, in other manner or order of proceeding, then by the Act it ſelfe is prouided and preſcribed: Neither doe we find any ſuch graunts to any in former ages: And of late yeares, vpon doubt conceiued, that penall Lawes might be ſought to be graunted ouer, ſome Parliaments haue forborne to giue forfeitures to the Crowne, and haue diſpoſed thereof to the relieſe of the Poore, and other charitable vſes, which cannot be graunted or imployed otherwiſe. Wee are alſo of opinion, that it is inconuenient, that the forfeitures vpon penall Lawes, or others of like nature ſhould be graunted to any, before the ſame be recouered or veſted in his Maieſtie by due and lawfull proceeding: for that in our ex-

perience it maketh the more violent and vndue proceeding againſt the ſubiect, to the ſcandall of Iuſtice, and the offence of many. But if by the induſtrie or diligence of any there accrueth any benefit to his Maieſtie, after the recouerie, ſuch haue been rewarded out of the ſame, at the Kings good pleaſure &c. Dated 8. Nouembris 1604. Et a ceſt Letter toutes les Juſtices Dengleterre ſubſcribe lour maines.

Mich

Mich. 5. Iacobi.

Lillingſtons caſe.

IOhn Duncumb port action de debt vs Thomas Lillingſton (que commence in common bank, Paſchæ 4. Iac. rott. 704.) pur 195. l. et coũt, q̃ vn Fauſtine Dirwel et Marie ſa feme, et le dit Thomas Lillingſtõ et Marie ſa feñ fuer ſeiſie del Rectorie de Lillingſton in coñ Bedf. in fee, & Mich. 31. El. leuiont ent vn fiñ al Papworth & Chambers et al heirs de Papworth, q̃ graunt & renõ vn rent charge de 30. l. hors del dit Rectorie al dit Fauſtine pur ſon vie, a cõmenc̃ puꝭ le mort de Marie ſa feñ, le rent annuelm̃t deſt̃ pay al feaſts de S. Michael larchangel, et Lannunciat̃: Prouiſo ſemp, qd' p̃d' conceſſio p̃d' annualis reddit' 30. l. non aliqualit̃ ſe extẽdat ad onerand' pſonas dict̃ Papworth & Chambers, ſed tantummodo ad onerand' dict̃ Rectoriã tota vita ipſius Fauſtini; et renõ le dit Rectory al Fauſtine et Marie duꝝ le vie del Marie, le remaind̃ al Thom̃ Lillingſton et Marie ſa feñ in taile, le reñ al dẽt hẽs de Lillingſton. 2. Oct. annñ 33. El. le dit Fauſtine, deuãt Sir Chriſtoph. Wray chiefe Juſtice, conuſt vn recognizance de 500. l. in nature dun ſtat ſtaple, ſolonqꝭ leſtatute de 23. H. 8. al Duncumb ore pl'. 20. Aug. 39. El. Marie le feme de Fauſtine morust, puis que mort Lillingſton & Marie ſa feme ent̃ in le dit Rectorie, et fuer ent ſeiſie in taile oue le reñ in fee al Lillingſton. Le dit Fauſtine 15. Aprilis 40. El. per ſon fait releaſe al dit Lillingſton & ſes hẽs le dit rent de 30. l. per aſſ: le pl' 21. April' 40. El. ſuiſt hors del Chañcer̃ Certior̃ al clerk des ſtatutes &c. ſur q̃ le dit recogniz̃ in natur̃ dun ſtat fuit certifie, et ſua extent, per que le dit rent fuit extend, & ſur Liberate deliuer al pl', et le pl' pur 6. ans et di. finit̃ al feaſt de S. Mich. archañ añ 2 Iac. port action de debt vers Lillingſton, q̃ tout ceſt tẽps fuit teñt del terre, et auerre le vie del Fauſtine. Sur tout ceſt caſe deux queſtions fuer̃ moue. ¶ 1. Si ceſt rent de 30. l. per añ, eſteant

extinct per le dit releaſe, eyt tiel eſſence quant al plaintif le comu-
ſee, que ceo poit eſtre extend et deliuer al pl'. ¶ 2. Admittant que
ceo poit eſtre extend ⁊ deliuer al plaintife, ſi le pl' come ceſt caſe eſt
poit mainteiner action de debt. Quant al p̄mer fuit obiect, que
ceſt recogniſance eſt in nature dun Statute Staple, et leſtatute
de 27. Ed. 3. cap. 9. a que leſtatute de 23. H. 8. cap. 6. referre, done pow-
er aux Maiors des ſtaples a p̄nder recogniſaunce des debts,
⁊c. et que, ſur certificat de tiel recogniſance in le Chauncerie, ſoit
b̄re maunde de p̄nder le cor̄ps des dits debtors ſaunz les mit-
ter al main p̄riſe, et de ſeiſer lour terres et tenem̄ts, biens, ⁊ chat-
eux, ⁊ ſoit le b̄riefe retourne in le Chauncerie oue la certification
del value des dits terres et tenements, biens ⁊ chateux, ⁊ ſur ceo
ſoit execution fait de iour in iour, in meſme le manner come eſt
contenus in leſtatute Marchant. Sur queux parols fuit b̄rge,
que rent extinct deuant execution ſue ne fuit deins les dits pa-
rol̄x, §. de ſeiſer les t̄res et tenements des dits debtors: Car al
temps del execution ſue le debtor nad le rent, mes ceo fuit tout
ouſterment extinct ⁊ ale per le dit releaſe. 2. Le b̄riefe de Extent
eſt de extender omnia terras & catalla ipſius Fauſtini, & in manus dictæ
nuper Reginæ ſeiſiri faceret, vt ea p̄fat̄ Iohanni liberari faciat, ⁊ intāt
q̄ le rent fuit extinct deuant le dit b̄riefe de Extent, ceo neſt in eſ-
ſe, ou deſtre extend, ou deſt̄ p̄riſe in le maine le Roy, ou deſt̄ deliū
al pl'. 3. Ser̄ enconˉ reaſon, que, le frankteneˉm̄t del rent eſteāt
extinct, le plaintife aūa execution de ceo, ⁊ per ceo dauer forſq̄
chattell: ⁊ lopinion in 3. & 4. Ph. & Mar̄, Dyer fol. fuit cite, ou
lopinion eſt, que rent extinct ne poit eſtre extend ⁊c. A que fuit re-
ſponde et reſolue, que a aſcun purpoſes per le Common ley rent
extinct ſer̄ dit in eſſe, quant a eſtraunḡ: ⁊ pur ć ſi le baron ſeiſie
dun rent in fee releaſe le rent al tenaunt de terre, ⁊ puis le baron
morust, ore la fem̄ ſ̄t endowe de ceſt rent iſſint extinct et auera b̄re
de Dower; les parol̄x de quel b̄riefe ſont, Prēciꝑ A. quod iuſte red-
dat B. tertiam partem triginˉ librarum redditus: & b̄re de Dower vnde
nihil habet eſt, Prēc' A. quod iuſte reddat B. &c. rationabilem dotˉ ſu-
am quę ei contingit de libero tenemento quod fuit &c. et il auera
graund Cape, ou petit Cape, come ſon caſe requit̄, de p̄nder le
rent in le maine le Roy: car, quoad petentem, ceo eſt in eſſe, comˉet
q̄ in verit̄ le rˉet eſt extinct. Et vide in le Sñr Aburgau. caſe, fol. 78. in le
6. part de mes Reports, pluſors caſes, ou choſe extinct ſer̄ dit in eſ-
ſe, pur le benefit dun eſtraunger. 2. Fuit obſerue, que le dit act de
23. H. 8. cap. 6. (per force de que le dit recogniſaunce in le caſe al
barre fuit p̄riſe) pur le execution, referre al Statute Staple, ⁊
leſtatute Staple, §. le dit act de 27. E. 3. referr̄ al Statute Mar-

chant

chant de anno 13. Ed. 1. les parolx de quel statute sont (Et quant les terres del dettors soyent liuere au marchants, cir il seisin de touts terres quex furent in le maine de dettour, le iour de la Recognizance fait, in que maines q̄ ilz sont apres deuenus per feoffement, ou auter maner) donq̄s maintenant p̄ le recognizance conus, le rent fuit lie, & ter̄ extendu p̄ lee p̄selle purview del statute, in quecunq̄ maines q̄ ceo deuiendra: et nient pluis q̄ apres execution ewe p̄ le conusee, le release de Faustine notera, nient pluis ter̄ ceo deuant execution; car le rent fuit lie al execution maintenant p̄ le Recognizance conus. Jsſint si home ad iudgem̄t a recouer det ou damages, p̄ ceo le rent q̄ il ad dascun estate de franktenem̄t est liable a ceo, & pur ceo, com̄t q̄ apres iudgem̄t il releasa ceo, le pl̄ alia execution dun moitie per Elegit, q̄ est done per le statute de Westm̄ 2. cap. 18. les polx de q̄l statute sont, Liberent ei medietatē terr̄ debitoris, quel p̄ construction del ley est de tout que il ad al temps del iudgem̄t done, ou a aſcun temps puis. Et in le case de Cheny in le court de Gards, añ 27. Eliz. fuit resolue, que ou cesty in reuersion infeoffe lessee pur ans al vse des auters, que com̄t q̄ le lease ter̄ surrender & extinct p̄ le common ley, vncore p̄ le saving del statute de 27. H. 8. des Uses, le terme del feoffee fuit saue. Auxy in mesm̄ le Court, añ 28. Eliz. in le case dun Jsſed, fuit resolue, que ou le sñior infeoffe le Copyholder al vse des auters, q̄ le copyhold estate per le saving del dit act fuit p̄serue. Jsſint in le case al barr̄, p̄ le act de Mercatoribus, tout le ter̄ (que include touts hereditam̄ts extendable) q̄ le dettor auoit al iour del recognizance conus serra deliuer, q̄l act p̄serue le rent deste in esse quant al execution del conusee. Et le case in 21. E. 3. 18. & Fitz. Na. B. 223. si Seignior & tenant Abbot soit, et le seignior relesse al Abbot son seigniorie, ceo est Mortmaine p̄ le statute de Religiosis, et le seignior paramount alia ceo per force del dit act, & vncore les polx del act sont, dñus feodi talitèr alienati auera ceo, & p̄ releas ceo est extinct, & vncore quant al seignior paramount, ceo est p̄ construction del act in esse, et il auera ceo. 3. Serra dure, que le conusor per son act demesn̄ barrera le conusee, q̄ est estraunger al releas, de son execu̅ del rent, q̄ peraduentu̅ fuit vn principal cause de p̄sel del dit Recognizance, dauer execution de ceo: et est pluis reason a relieuer le conusee, in q̄ nul default ou laches fuit, que le terre tenāt, q̄ ne doit este misconusant de tielx charges de record. 4. Chescun execution ad in iudgement del ley, relation & retrospect al iudgem̄t, come appiert in Shelleyes case, in le 1. part de mes Reports. Et le dit case de Dower, & le graund Cape & petit Cap̄ sur ceo, et lestatute de Mercatoribus, q̄ lia tout le terre del conisor

que il ad al iour de recognizance conus, in q̃ cunq; maines q̃ ceo viendra, done pleine & sufficient rẽs a touts les dits obiections: et lopinion dun Serieant Obiter, in 3. & 4. Ph. & Mar. fuit tout ousterm̃t denie. Quant al 2. point fuit resolue per totam Curiam, que laction de Dette ne gist cy longe cõe le extent endure, car cy longe ad le rent continuance, coment q̃ le franktenemẽt de ceo soit determine. Et tout ceo, quant a cest point, que fuit resolue in Ognells case in le quater part de mes reports folio 49. fuit affirme deste bone ley, & 9. H. 7. 17. q̃ si seignior graũt son seigniory pur ans, le grantee durant les ans nauera accion de det. Et fuit auxy resolue, q̃ coũt q̃ soit expres puisq; q̃ le pson ne ser̃ charge in bre de Annuitie, vn̄ in tiel case aps lannuitie ou rent determin̄ le pson del fre tenãt ſra charge in det pur les arrerages, pur ceo q̃ lannuitie est determine, & il ad nul auter remedy, come est tenus in Ognels case & 6. Eliz. Dier 227. la cite. Fuit auxy resolue, q̃ si home graunt rent charge pur vie hors de son fre, et le rent est arere, et le grantor enfeffe A. & le rent est arere in son temps, et puis A. infeffe B. & le rent est arere in son tẽps, & puis le grauntee mor̃ust, ses executors aueront acc̃ de det vs cheſ̃ de eux, pur le rent arere in son temps, car, Qui sentit commodũ sentire debet & onus, cõe est auxy tenus in Ognels case.

Mich̃

Mich. 5. Iacobi.

Bedels case.

Hill. 1. Iac. Rot. 375 in bank le Roy int Eliz. Bedel pl' in Deue, & Michaell Bedell defendãt le case fuit tiel. Robert Bedel seisie dun meſuage &c. in Iuer & Langley in Com̃ Buck. in fee, p̃ la feme le dit Eliz. a dillue 3. fits: James fuit le 2. fits, et Mich. le 3. le dit Robert per indenture triparty inter luy & la feme del del 1. pt, le dit James son 2. fits del 2. part, et le dit Mich. son 3. fits del 3. part, in conſideration del naturall affection et paternall amour, q̃ il ad al dits James et Michael, et pur lour melior preferment & aduancement, et al entent q̃ les dits tenements continuer in son noſme & ſanke, couenant p̃ le dit Indenture, q̃ il & les heires eſtoier̃ ſeiſie des dits tenem̃ts, al vſe de luy meſm̃ pur vie, et apres son deceaſe al vſe del dit Elizabeth ſa feme pur vie, et puis lour deceaſes, dun moitie al vſe del dit James in taile, et dauter moitie al vſe del dit Mich. in taile &c. et puis Robert mozuſt; et tout ceſt matter fuit troue p̃ eſpecial verdict. Et le ſole queſtion fuit, ſi (come ceſt caſe eſt) aſcun vſe ſurð al Elizabeth ſa feme ou nemy. Et fuit obiect, que la feme ne fuit deins les conſideracions, q̃ fuer̃ expreſſe in le Indenture, et nul auter conſideration poit eſte auer̃. q̃ eſt contein in le fait, car tout le ſubſtance del agreement des parties fuit referre al fait, et tout couient appier in ceo, & riens eſt relinque al parol ou auerremẽt des parties. A que fuit reſponde & reſolue, que conſideration que eſtoit oue le fait & nemy repugnant a ceo poit eſte bien auer̃, cõe eſt adiudge 3. & 4. P. & M. Dier 146. in Millers caſe, quel Vide in le prim̃ part de mes reports in Milmayes caſe fo. 176. ¶ 2. Admittant, que auter conſideration q̃ eſt expreſs in le fait ne puit eſte auerre, vncore in ceſt caſe la eſt expreſs conſideration, car quant il limit ceo al vſe de ſa feme pur terme de ſa vie, ceo impoꝛt ſufficient conſideratiõ in luy m̃, & ne beſoigne aſcũ aiũt, car Manifeſta probatione

probatione non indigent, come in 13.H.4.17. ou lestatute de W.1.ca. 38. ordeine, q̃ le brẽ de Ass. de Mortdaunc' eiet le term̃ de limitation del coronm̃t le Roy Henry le third, la est tenus, q̃ si enfãt port Ass. de Mortdaunc' de possession son pier ou meer, ne besoigne dalleger, q̃ ceo fuit puis le coronm̃t le Roy Henry 3. car ceo appiert. Issint, si le pier tenãt p seruice de chiṽer infeffe son fits et heire apparant deins age, ne besoigne dalleger ceo deste collusion, car ceo est apparant, Wimbishes case Plow. Com. & 27.H.8. Dacres case, 33.H.6.14. 3.H.6.32. & quędam tacita habentur pro expressis. Issint si ieo couenant, q̃ in cõsideration de patnal amour & affection a mon eigne fits, a estoier seisie al vse de mon eign̄ fits pur vie, ou in tail', & puis al vse de mon 2. fitz in taile, & puis al vse dun tiel mon cosin in fee, comt q̃ le consideratiõ expresse in polx respect solem̃t leigne fitz, vncore le consideration apparãt in le fait, in limiting le vse a mon 2. fits, ou mon cosin, est sufficiẽt in ley a rayser vse. Issint si ieo couenant a estoier seisie al vse de mon feme, fits, ou cosin, ceo bien raiser vn vse sans ascũ expres polx de consideration; car sufficient consideration appiert, & paternal amour & affectiõ appiert. Mez si le pier p fait indent, in consideration de C.li. pay p son fits, couenant a estoier seisie al vse de son fits, la nul vse serra raise al fits, sinon q̃ le fait soit inrolle, p lestatute de 26.H.8. cap.10. car ceo est in nature dun bargaine et sale, & la Expressum facit cessare tacitum. Et puis sur cest iudgem̃t brẽ de Error in mesme cesluy terme fuit port sur le nouel statute, et per touts les Justices del common banke, et les Barons del Escheqer iudgem̃t fuit affirme. Quod nota bene.

Mich'

Mich' 5. Iacobi.

Beresfords caſe.

IN Court de Gards int James Bereſford relator, et Thomas Bereſford, & auters defendants le caſe fuit briefem̃t tiel. Aden Bereſford eſteãt ſeiſie des Manors de Fennibently, Bircham, & auterz terrez in fee, per ſon fait 14. Ionij 40. Eliz. infeoffe William Fleetwood & auters in fee, al vſes de certain Indenturez port date 20. Nouemb. 34. Eliz. ſ̃, al vſe del Aden le pier, for terme of his life, and after his deceaſe, to tee vſe of George Beresford, ſonne and heire apparant of the ſaid Aden, and the heires males of his bodie lawfully begotten; and for default of ſuch iſſue, to the vſe of Aden Bereſford, ſonne of Iames Beresford, and of the heirs males of the ſaid Aden, ſonne of the ſaid Iames, lawfully begotten; and for default of ſuch iſſue, to the vſe of the heires males of the bodie of the ſayd Iames Beresford lawfully begotten; and for default of ſuch iſſue, to the vſe of Thomas Beresford, third ſonne of the ſayd Aden, and of the heires males of the bodie of the ſayd Thomas lawfully begotten; and for default of ſuch iſſue, to the vſe of Humfrey Beresford, fourth ſonne of the ſayd Aden, and of the heyres males of his bodie lawfully begotten, with diuers remainders ouer, and with remainder the heires females of the bodie of George, and ſo of Aden, the ſonne of Iames lawfully begotten, &c. with the remainder to the right heires of Aden the father for euer. Et le ſole queſtion del caſe fuit, que eſtate Aden le fits de James auoit. Et ceſt caſe fuit deux foitz argue deuant lez deux chiefe Juſtices, & le chiefe Baron al Serieants Inne. Et fuit obiect, que Aden le fits de James nauoit fee tayle mes fee ſimple, car le limitation a luy eſt, to the vſe of Aden, and of the heirs males of the ſaid Aden lawfully begotten, et icy fault ceux paroix (of the bodie) of the ſayd Aden, iſſint que oze le limitation neſt que in effect forſq to the vſe of Aden, and of the heires males of the ſayd

Aden,

Aden, car ceux subsequēt parolx, lawfully begotten, sont imply, car chescun heire couient estre loyalment engendr̄; et limitation a vn & a ses heires males, est sauns question vn fee simple. Et vn iudgment in bank le Roy int Abraham & Trigge, Hill. 38. El. rot̄ 739. fuit forment vrge, ou feoffement fuit fait al vsez de certaine Indentures (come cest case est) ou vn limitation fuit, ad opus & vsum Gabrielis Dormer & hæredum masculorum suorum legitimè procreatorum, &, pro defectu talis exitus, al vse de diuers auters in taile in remainder; & sur argument al barre et al bench fuit adiudge, q̄ Gabriel ad vn fee simple, car nest limit de quel corps les heires males serr̄ ingendres, mes son intent fuit, quod singuli hęredes sui masculi inherit̄, quel entent ne estoit oue le rule del ley, & conīt q̄ rem̄ sont limit ouster, que ne poient estre sur fee simple, vncore ceo ne poit encounter le rule del ley, faire parolx de fee simple destr̄ cōuert a vn estate taile: Et ils concludont oue Lit. fol. 6. b. que le reason pur quoy, quant terres sont dones a vn & a ses heiees males ou females, est fee simple, est, pur ceo que nest my limit per le done de quel corps lissue male ou female issuera; & issint ne poit in ascū maner estre prise p lequitie del statute de donis conditionibus, et pur ceo c̄ est fee simple. Issint in le case al barr̄: & oue ceo accord̄ le liure in 8. E. 3. 49. ou terres fuer̄ dones a vn & hæredibus suis legitimis, ceo est fee simple, que est tout vn oue limitation a vn & hæredibus suis legitimè procreatis. Mes fuit responde & resolue per les dits chiefe Justices et chiefe Baron, q̄ le dit Aden fits del dit Ja. auoit vn estate taile, per que touts les rem̄ ouster fuer̄ loyalment vestue: car fuit agree, q̄ a vn estate in taile est requisite in touts dones & limitation des vses, que les heires soyent limit destre, procreat̄ ou engendre dascun corps in certaine, ou per exp̄sse polz, ou parols q̄ tant amount, car ceux prescise parolx (de corpore) ne sont necessarie al creation dun estate in taile, cy long que sont polx q̄ tant amount, come in 5. H. 5. 6. ou le done fuit Dedi vnum mess. R. et K. vxori eius & hæredibus eorum et alijs hæredibus dict' R. si dict̄ hæredes de R. & K. exeuntes obierint sine hæredibus de se: In cē caz ceux parolx (de corpore) sont omise, & vncore adiudge bone estate taile, car sont parolx que tant amount, car le done in effect est, al baron & feme & al heires del baron & feme issuants, ou de dit R. & K. exeunt̄, ou hęredibus de se, & tout ceo est per force de cest prepositiō (de) et (issuants) Et in 12. H. 4. tit̄ Bre tre fuit done a vn et hęredibus quos sibi contigerit habere de vxore sua, icy fault polx de corpore, vnē pur ceo q̄ ceo tant amount ceo est adiudge vn estate taile: & 3. E. 3. tit̄ Briefe 743. terr̄ est done a vn & hęredibus suis de prima vxore sua, ceo est bōe estate taile. Et fuit resolue, q̄ si tres sont done a

vn

vn, & hęredibus de ſe exeuntibus, q̃ ceo eſt bone eſtate taile: et in ceux caſes le pꝛincipal cauſe eſt pꝛoꝛce de ceſt pꝛepoſition (de.) Et diũs auters caſes fuer̃ miſe, p q̃ fuit concluꝺ, q̃ ou parols (de corpore) ou q̃ tant amount, ſont requiſite al creatiõ dun eſtate taile. Et fuit reſolue, q̃ in le caſe al barre la fuer̃ parolꝛ q̃ tant amount, car p lact de donis condicionalibus, volũtas donatoris in carta doni ſui manifeſtè expreſſa de cętero obſeruetur, ⁊ pur ceo in ceſt caſe tiel conſtructiõ ſ̃r̃ fait, q̃ ꝓduce 3. effects: 1. a eſtoier oue rule del ley: 2. oue lentent del donoꝛ: 3. q̃ touts les pt̃s del Indentur̃ poiẽt eſtoier: et pur ceo tranſlate le dit limitatiõ al Aden in Latin, ⁊ dõq̃s le limitation eſt, ad vſum Adeni & hęredũ maſculorũ de dicto Adeno legitimè procreatorũ, ou, et hæredum maſculorũ legitimè procreatorũ de dicto Adeno, ⁊ ceo tant amount cõe il ad dit p dictũ Adenum legitimè procreat̃: car tout eſt vn in effect. Car ceſt pol (de) ou (ex) accouple oue pol ſubſequent (ꝓcreat̃) appꝛopꝛiate les heires males deſt̃ del coꝛpꝰ de Aden: car de Adeno, ou ex Adeno, & de corpore Adeni ſont tout vn. Et ceo eſt directm̃t pue p le iudgem̃t in le dit caſe de 5. H. 5. 6. car la fuit (de) ⁊ (exeunt̃) et icy eſt (de) ⁊ (procreat̃) q̃ cõt tout a vn effect, ⁊ in le dit caſe de Abꝛaham ⁊ Trigge (de) fault. Et qm̃t a ceo fuit obiect, q̃ limitation in Latine poit bien eſte, ad vſũ dicti Adeni, & hęredũ maſculorũ dicti Adeni (in le genitiue caſe) legitimè procreat̃, ⁊ nemy de dicto Adeno, ou ſi le limitation ne ſoit certain pur faire eſtate taile, ſont polꝛ aſſets certaine pur faire eſtate in fee. A q̃ fuit reſponde ⁊ reſolue: 1. couient eſte de dicto Adeno, car auterm̃t ceo ſ̃ra enconꝰ entent del donoꝛ, ⁊ touts les rem̃ ouſter ſ̃ra voide, ⁊ touts foits tiel conſtruction couiẽt eſte fait, q̃ touts les pt̃s del fait poient eſtoier enſembꝰ, ſi ceo poit eſtoier oue le rule del ley: 2. le ſubſequent clauſe eſt, and for default of ſuch iſſue, et iſſue ne poit eſtre del Aden, ſinon q̃ les polꝛ ſont de dicto Adeno; et pur ceo vn clauſe eſt bien explane per lauter: et ſolonq̃ ceſt reſolution le caſe fuit decree accoꝛꝺ. Vide 35. Aſſ. pla. 14. 37. Aſſ. pla. 14. 39. Aſſ. pla. 24. E. 3. 28. 18. E. 2. Briefe 836.

Mich̃

Mich̃ 4. Iacobi.

Kennes caſe.

EN le Court de gards inter Thomas Robertſon & Elizabeth ſa feme pl̃, & Florence Lady Stallenge def. le caſe fuit tiel. Chriſtopher Kenne armig̃ fuit ſeiſi del mannor de Kenne in le Countie de Somerſet, tenus per ſeruice de chiualer in capite, et 37. H. 8. de facto pr̃iſt al feme Elizabeth Stowel, & puis le dit Elizabeth Stowel ad iſſue Martha mere del Elizabeth vn dez oze pl̃, & puis 1. & 2. Ph. & Ma. in le court de Audiẽce, inſt le dit Chriſtopher Kenne pl̃ & Eliz. Stowell def. le Judge la done ſentence in ceux parolx. Prętenſ. tractat̃, contract', ſponſalia, & matrimonium, quin verius effigiem matrimonij inter Chriſtopherũ Kenne, & Eliz. Stowell in minore & ſua impubertatis ætate eorundem aut eorum alterius de fact', habit̃, contract', & celebrat̃ fuiſſe & eſſe, eoſdemq; Chriſtopherum & Eliz. tam tempore contractus & ſolemnizationis dict' prętenſ. matrimonij, quam etiã continuò poſtea eidem matrimonio p̃tenſ. & ſolemnizationi eiuſdẽ, diſſenſiſſe, contraueniſſe, reclamaſſe, & reluctaſſe, ac eo prętextu huiuſmodi prętenſ', tractat̃, contract', ſponſalia, & matrimoniũ de iure nullũ & nulla, irritum & irrita, caſſum & caſſa, inualidum & inualida, & minus efficax & inefficatia, fuiſſe & eſſe, viribuſq; iuris caruiſſe, carere, & carere debere; necnon antedictos Chriſtopherum Kenne & Eliz. Stowell, quatenus de facto fuer̃ ad inuicem matrimoñ vt prędicitur copulat̃, ab inuicem ſeperand' & diuorciand' fore debere pronunciamus, decernimus, & declaramus, eoſque ſeperamus & diuorciamus, eiſdemq; Chriſtophero & Eliz. licẽtiam & libertatem ad alia vota conuolanda concedimus, tribuimus, & impertimur per hanc ſententiam nr̃am definitiuam, ſiue hoc finale noſtrum decretum, quam ſiue quod ferimus & promulgamus in hijs ſcriptis &c. Et puis le dit diuorce, le dit Chriſtopher Kenne eſpouſe & pr̃iſt al feme Elizabeth Beckwith, & puis anno 5. Eliz. deuant diuers commiſſioners Eccleſiaſticall,

aſtical le dit Eliz. Beckwith libel vers le dit Chriſtopher Kēne, q̄ il (deuant le mariage int̄ eux contract) ad marie oue le dit Eliz. Stowel, ſur q̄ proces fuit agard vers le dit Eliz. p̄ intereſſe, & ſur due examination del cauſe fuit ſentence, que le mariage int̄ le dit Chriſtoph. Kenne & Eliz. Beckwith fuit loyall, & ſentence eux ad exequenda coniugalia obſequia &c. & q̄ le dit Chriſtoph. Kenne ne vnq̄s fuit loyalm̄t eſpouſe al dit Eliz. Stowell, & puis le dit Eliz. Beckwith mozuſt, apres q̄ mozt le dit Ch. Kenne priſt al feme le dit Florence p̄ q̄ il ad iſſue vn file Eliz. & mozuſt, & añ 36. Eliz. fuit troue p̄ office in le countie de Somerſet p̄ force dun Mandamus aps̄ le mozt del dit Ch. Kēne, q̄ le dit Eliz. Kēne fuit ſa file & heir̄, & q̄ il fuit deins age, ſ̄, al age de 10. moys, le gard et cuſtodie de q̄ le Roigne graunta a ſir Nicholas Stallenge et le dit Florence adonq̄s ſa feme. Sur q̄ le dit Martha, p̄tend̄ luy meſme deſtre file et heire del dit Ch. Kenne, oue ſon baron Silueſter Williams exhibit lour bill in le court de gard̄ vers lez ditz ſir Nicholas et Florence ſurmittant, q̄ le dit Martha fuit file et heire del dit Ch. Kenne del corps del Eliz. Stowell ſon loyall feme (come el p̄tend) allegeant, q̄ ils al temps de lour mariage in añ 37. H. 8. fuer̄ ambideux de eux ouſter lage de conſent, & q̄ ils cohabite enſemble 9. ou 10. ans deuant le dit ſuppoſed diuorce, durant quel cohabitation le dit Martha fuit p̄create inter eux, & p̄iont licence, que le dit Silueſter & Martha poiēt trauers le dit office. A q̄ lez ditz ſir Nicholas & Florence reſpond̄; & les p̄ examine diuers teſtimoignes, & deuant publication ſir Nicholas mozuſt, & ſur ceo le dit Silueſter et Martha exhibit Bill de reuiuer vers le dit Florence, & puis Martha ayant iſſue Eliz. feme oze p̄ mozuſt, puis quel mozt les dits Tho. Robertſon & Eliz. ſa feme pozt̄ nouel bil de reuiuer, a reuiuer le p̄mer ſuit, in q̄ les teſtimoignes fuer̄ examine. Et ceſt caſe fuit referre al Fleming & Coke chiefe Juſtices, & al Tanfield chiefe baron, & al Yeluerton & Williams Juſtices, Snig & Altham barons del Exchequer. Et in ceſt caſe 3. queſtions fuer̄ moue. ¶ 1. Si enconter le dit p̄mer diuorce les p̄ ſerront receiue, cy long come ceo remaine in force, dauerrer q̄ ils agreont & conſent al mariage, ou que ils ſerra conclude p̄ le dit diuorce. ¶ Le 2. queſtion fuit, ſi ils auer̄ trauers al dit office deuāt office troue pur eux. ¶ 3. Sils auer̄ bil de reuiū ſur vn bill de reuiuer, come ceſt caſe eſt. Et les Juſtices oyent pluſors arguñts deuant eux a ſeuerall iours, & in ſeuerall termes al Seriants Inne. Et quant al p̄mer fuit obiect, q̄ appiert p̄ Litt. lib. 2. fol. 22. & p̄ leſtat de Merton cap. 6. & 35. H. 6. fol. 40. & c. q̄ le cōmon ley et pliañts auoient p̄iſe notice del age de conſent de male deſtre 14. et de fe-

male deſtre 12. et pur ceo, ceo eſt triable per le common ley; et ſi in veritie le baron & feme ſont del age de conſent al temps de le eſpouſels, nul diuorce apres, pt̃endant q̃ ils fuer̃ deins age de cõ-ſent, concludera les pties ou lour heires mes q̃ ils poient, puer le contrary al cõmon ley, & pr̃incipalm̃t in le caſe al barre, pur ceo q̃ ceo concerne inheritance & le voire diſcent de ceo: & ſententia contra matrimonium nunquam tranſit in rem iudicatam. 2. Admittant q̃ ils fuer̃ deins age, & puis age de conſent ils aſſent ou cohabit, & ount iſſue, com̃t q̃ diuorce pur impubertie & minority des ans ſoit ewe, vncore ceo neſt forſq; euidence, & ne concluder̃ les parties in aſcun action al common ley a prouer laſſent; car intant q̃ le diuorce eſt ewe pur ceſt cauſe, & le cauſe eſt triable p̃ le cõmon ley, le diuorce ne concludera: & 11.H.7.fol.27. fuit cite, q̃ ceſtuy q̃ pleade diuorce couiẽt mẽe le cauſe del diuorce, & ſi le cauſe ſoit triable al common ley (come in le caſe al barre ceo eſt) la ceo ne concludera; mes ſi ſoit choſe nient tryable al common ley come pr̃econtract, pr̃ofeſſion &c. la ceo eſt auterment. Mes quant a ceo fuit reſolue per touts les dits Juſtices & Barons, q̃ le dit ſentence cõcluder̃ cy longe come ceo remain in force, & ceo pur diuers cauſes. 1. Eccleſiaſticall Judge ad ſentence le contract & eſpouſels de-e̅ voide & de nul effect, & com̃t q̃ ils fuer̃ del age de conſent, vncore ſi le originall contract fuit voide & de nul effect, donques la fuit iuſt cauſe de diuorce: 2. La fuer̃ parolr de diuorce & ſeperation, eoſdem diuorciamus & ſeperamus, & done a cheſcun de eux libertie ad alia vota conuolanda: 3. Si le mariage vſt eſte infra annos nubiles, leccleſiaſticall Judge eſt iudge cibien del aſſẽt come del pr̃im̃ contract, & q̃ ſerr̃ ſufficient aſſent & q̃ non, & com̃t q̃ leccleſiaſticall Judge mẽe cauſe de ſon ſentẽce, vncor̃ intant q̃ il eſt iudge del originall matt̃, ſ. del loialty del matrimony, no⁹ ne vnq̃s examiner̃ l' cauſe le q̃l c̃ ſoit voier ou non: car des choſes quor̃ cognitio cauſæ ptient ad forũ eccleſiaſticũ, no⁹ doiom⁹ doñ foy a lour ſẽtẽces, cõe ilz donõt al iudgem̃ts in nr̃e courts. Auxy le rule de lour ley eſt, Qd̃ maſculi quidẽ puberes, fœminæ viri potẽtes matrimonio cõſentire poſſunt, & le determination de c̃ appẽt a lour conuſãce. Et q̃m̃t al caſe de 11.H.7.f.27. voier eſt, q̃ le cauſe de diuorce eſt deẽ mẽe, pur ceo q̃ aſc̃ diuorce diſſolue le matrimony, ſ. à vinculo matrimonij. baſtard̃ iſſue, & barre le feme de dower; & aſcun à menſa & thoro, q̃ ne diſſolue le matrimony ne barre la feme de dower, ne baſtard̃ iſſue. Mes in caſe de depr̃iuation le cauſe ne beſoigne deẽ nẽe: car ſoit ceo a tort ou a droit, ſur cauſe ou ſans cauſe, ceo eſtoit, & cheſcun depr̃iuation diſable & remoue le partie depr̃iue cibien pur vn cauſe come pur auter, cy longe come le depr̃iuation remaine

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in force. Vid' 8. Ass. 9. E. 4. 24. 7. E. 4. 32. 3. H. 6. 12. H. 8. 5. Et Coke chiefe Justice cite le case in 22. E. 4. tit Consultation 5. Corbets case, ou le case fuit, q̄ sir Rob. Corbet auoit p̄ Eliz. sa fem̄ 2. fits Rob. leigne & Roger le puisne & morust; Rob. leigne esteant deins lage de 14. ans prist fem̄ vn Matild, & al pleine age demurre ensemble & habuerunt carnalem copulā, & cogniti & reputati pro viro & vxore palā, & puis le dit Ro. demitt le dit Matild sa fem̄ ayāt nul issue p̄ luy, & espouse vn Lettice &c. viuāt le dit Matild, & ad issue p̄ luy Rob. & puis Rob. q̄ issint ad espouse L. morust; & Lettice preche ouertment, q̄ el fuit le loyall feme de Rob. & son fits mulier, per q̄ le dit Roger fits le dit sir Rob. Corbet suit in Spirituell court a reūser ceux espousels enter Robert son frere & Lettice, & que Lettice soit mise a silence, p̄ q̄ Lettice suist phibic̄. Et in cest case 3. points fuer̄ resolue. 1. Que si Rob. & Matild vssont ewe issue & ount este vniustm̄t diuorce, & puis Rob. vst marie Lettice & ad issue & morust, la lissue de Rob. & Matild puit auer suit in Ecclesiasticall court pur auoider le diuorce; car cy longe come le diuorce estoit in force (le cōmon ley done cy grand foy a ceo) lissue ne puit aū remedie p̄ le cōmon ley. Et nota in le case nul cause de diuorce appiert, mes pur cause q̄ le mariage fuit ewe quant les parties fuer̄ infra annos nubiles: & in le dit case del diuorce lissue auera son suit a reuerser ceo originalm̄t in court Christien, car le diuorce est iudgem̄t spirituel & couiēt estre reuerse in le spirituel court; mes in le case de Corbet la est nul diuorce ne aut spirituell iudgem̄t q̄ disablier̄ le dit Roger, & pur ceo il doit originalm̄t commence al common ley come heire, & auera touts actions in temporall court come heire & touts benefits come heire vers lissue de L. non obstant le 2. espousels: car ils sont void in touts leyes temporell & spirituell, & laction & originall a bastard aſcū ne ser̄ moue in spirituel court originalm̄t, quant nul sentence spirituel disable luy, mes il commencera in temporel court, & donques si besoigne soit ils escrier̄ al spirituel iudge si generall bastardie soit alledge: & le reason de ceo est, pur ceo q̄ home poet estre bastard in le temporel ley & mulier in le spirituel ley, & è conuerso. Cōe home q̄ est engender in auowtrie durāt le couerture est mulier p̄ le temporel ley & bastard p̄ le spirituel ley. Et si home bate vn clarke, si sue in le spirituall court a excommunicater luy pur le peche, il fait bien, mes si il sue la pur auer amend̄ il auera prohibition. 2. Fuit resolue in mesme le case de Corbet, q̄ quant le spirituell court auera iurisdiction, il couient q̄ tout le cause soit spirituel, come si person libel vers lay home pur dismes imports, le temporell court auera iurisdiction, car ceo est mixt oue le temporaltie: & in mesme le case le matter

est mixt (p consequence) oue le temporaltie, s, que lun est heire & q̄ lauter est bastard: mes si le dit case de dismes soit int̄ parson & p-son, ou int̄ parson & lay home, si le droit de dismes vient in question le spirituall court auera iurisdiction. Vide Iact de circumspecte agatis, ou est dit, q̄ merè spiritualia appēt al conusaunce ecclesiasticall, & Linwood cap. de foro competent̄ fol. 7. dit, merè spiritualia sic dicta, quia non habent mixturam temporalium: & ou le dit act dit, de mortali peccato, Linwood ceo expound & dit, Non intelligas de omni peccato mortali, sed de tali cuius punitio de sui natura spectat ad forum ecclesiasticum: nam si de ratione cuiuslibet peccati mortalis cognosceret Ecclesia, sic periret temporalis gladij iurisdictio, cum vix esset dare causam quin ratione peccati possit deferri ad Ecclesiam. 3. In mesme le case de Corbet fuit resolue, q̄ quāt tout le cause soit originalment spirituell, uncore si apres in spirituell court ils sont a trier temporell conusaunce prohibition girra: come si lun parson dit, q̄ le lieu est deins son parish & lauter eccl̄, apres tiel matter monstre prohibition girra, & oue ceo accord 39. E. 3. 23. & 5. H. 5. 10. Nota lecteur bone diuersitie int̄ repeale dun sentence de diuorce done in le vie des parties, & a doner sentence de diuorce apres le mort des parties: car appiert p case cest de 22. E. 4. q̄ vn sentence de diuorce poet estre repeale in le spirituel court p tuit la apres le mort des parties, mes si alcun des pties soient mort deuāt alcū diuorce sentence in le ecclesiasticall court, la ils ne poient suer in court Christiē a declarer le mariage void & a bastard̄ lissue; car le triall appent al court le roy originalm̄t, ou nul disabilitie est p sē-tence in le spirituel court: & oue ceo accord 39. Ass. pl. 10. 39. E. 3. 31. & 24. H. 8. tit̄ Bastardie 44. b. q̄ diuorce puis le mort dalcun des parties, ou sentence declaratory q̄ le mariage fuit void puis le mort dalcun des pties ne liera. Car ceo nest q̄ in effect a bastarder lissue de q̄ ilz nount originalm̄t conusauns come ad estre dit. Vide 19. Assis. pl. 2. q̄ si 2. sont marie infra annos nubiles, & aps le pleine age diuorce soit prise int̄ eux ceo dissolue le mariage, car la, femm̄ port Assise vers son baron. Vide Buries case in 5. part de mes Reports, fol. 98. & vide Cawdries case in mesme le liure, & vide Buntings case in le 4. part de mes Reports f. 28. & vid. 11. H. 7. 9. & 34. H. 6. 14. & 12. H. 8. 5.

Quāt al 2. point fuit obiect, q̄ le pl̄ auera trauers sans alcū office troue pur luy. Car quant vn direct et sufficient office est troue in vn countie p force dū Diem clausit extremū ou Mandamus puis le mort del auncestor, la ne serr̄ vnqs office troue arere pur mesm̄ la terre cy longe come ceo estoit in son force. Car auterm̄t le ley ne vnques auera fine, & oue ceo accord 4. H. 7. 15. 14. E. 4. 5. 15. E. 4. 11. 2. H. 7. 12. 18. et pur ceo serr̄ dure a chaser luy a troū office pur luy

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deuant q̃ il poet trauers, ou per la ley il ne poet trouer alcun office in tiel case. 2. Fuit obiect q̃ le statute de 2. E. 6. cap. 8. ad remedie ceo si alcun office fuit requisite p̄ le cõmon ley, les pols de q̃l act sont. And whereas one person or more is or shalbe found heire to the Kings tenant by office where any other person is or shall be heire, or if one person or more be or shall be found heire by office in one countie, and another person or persons is or shall bee found heire to the same partie in another countie &c. be it enacted, that euery person grieued by any such office shall and may haue his or their trauers to the same immediately, or after, at his or their pleasure, and proceed and haue like triall and aduantage, as in other cases of trauers. Per que appiert q̃ le partie greue auera trauers (sans pler dalcun office) & proceed & dañ tiel aduantage come in auter case de trauers, & in auters cases de trauers ne beloigne alcun office. Mes fuit resolue que (come cest case al barre est) le plaintife couient dauer office troue deuant que il poet trauers: & quant al primer obiection fuit responde & resolue, q̃ in tiel speciall case de trouer dun heire cestuy que est droit heire et greue per loffice auera nouel brieue de Diem clausit extremum ou Mandamus: Car il est estraunger al dit office, et pur ceo loffice ne concludera luy: et le dit rule et les liures sont, destre intend̄ que meisme le person nauera nouel Diem clausit extremum ou Mandamus aps office vn foitz duemt troue, mes auter pson ceo auera in cest case a prouer luy m̃ heire, & oue ceo accord̄ 30. Ass. p. 28. Fitzh. Nat. Bre. 261. 262. 4. H. 7. 15. 12. R. 2. tit̃ Liuery 28. Stamford prærog. 52. b. Et q̃ doit este office deuant q̃ il poet traūs le common ley in c̄ ad graund reason, car quant le Roy est suer de gard ou primer seisin p̄ loffice nest reason q̃ alcun q̃ pretend luy m̃ heire trauerse loffice q̃ lauter nest heire tanqz le Roy soit suer dauer profit per luy ou per gard ou p̄ primer seisin, car donques aps le primer office auoide per trauers il poet mes matter a barrer le Roy del gard & primer seisin q̃ ne serr̃ reasonable: Auxy al common ley enterpleād gist ou p̄ 2. seuall offices in vn m̃ countie seuerall psons sont seualm̃t troue hres a vn m̃ pson a vn m̃ terre, ergo le pty greue poet aū bre a troū office pur luy, car autm̃t nul inkpleād poet ee, car le hre q̃ fuit prim̃m̃t troue hre aña Scir̃ fac' in le Chauncery vs cesty q̃ est troue hre p̄ le 2. office (pur ceo q̃ le Roy est in awerousl a q̃ il ferr̃ liuery) sur q̃ sil appeare & iustifie le 2. office pur le triall del priuity del sanke, donqs il doit traūs le prim̃ office (car tout k' inkpleād ſr̃ sur c̄) & sur k' triall de c̄ cesty q̃ est troue hre auera liuery. Jsint q̃ appiert clerem̃t q̃ cesty q̃ trauerz loffice in tiel case doit auer office troue pur luy p̄ le common ley. Et oue c̄ accord̄ 36. E. 3. tit̃ Traūs 44. 16. E. 4. 4. F. N. B. 162. Car cēy q̃ doit suer̃ liuery

liuer couient dauer office deuant q̄ il trauerſera, auterm̄t dun eſtraunger q̄ deſtroy le title le roy. Vide 36. E. 3. tit̄ Trauers 44. 12. E. 4. 18. 16. E. 4. 4. 43. Aſſ. 20. 9. H. 7. 24. 5. E. 4. 5. 12. H. 6. 46. E. 3. Briefe 618. Quāt al 2. obiection fuit reſponde et reſolue, q̄ le dit act de 2. E. 6. ne done trauers a ceſtuy q̄ pretend luy meſm̄ deſtre heire encont̄ vn office trouant pur vn auk heire ſans office troue pur luy, car ceo eſt incident a ceo q̄ neſt pas tolle p̄ general poīr del act, car dons̄ touts interpleaders ſerr̄ p̄ ceo tolle auxi, q̄ ne vnques fuit lentention del act, mes lentēcion des fealoīrs del act fuit a toller vn graund doubt q̄ fuit al cōmon ley, ſi vn ſoit troue heire deins age p̄ vn office, & puis auter eſt troue heire in meſm̄ le countie de pleine age, ſi aſcun trauers et interpleader ſerr̄ immediam̄t, ou ſi trauers & interpleader targera tanq̄ le pleine age del infant fuit vexata queſtio, come appiert in n̄re liures, s̄, 36. E. 3. tit̄ Trauers 44. 5. E. 4. 4. 1. H. 7. 14. F. N. B. 162. et pur ouſter ceſt doubt fuit leſtat̄ de 2. E. 6. fait, per q̄ eſt enact q̄ le ptie greue auera trauers immediatment, q̄l poī (immediately) proue lentention del dit act a prouider pur le dit doubt et a doner ceſtuy q̄ fuit greue in tiel caſe trauers maintenant mes nemy de alter le foundation del trauers, s̄, office q̄ doit eſtre troue pur le party greue deuant q̄ il poet trauers: & ou le ſtatute dit q̄ il auera trauers maintenant, eſt intend q̄ il doit obſeruer touts incidents a vn trauers, car loffice eſt le ground et foundation de ſon trauers. Quant al 3. point fuit reſolue per le greinder pt q̄ vn bil de reuiuer ſur bil de reuiū: ne ſerra admit pur le infinitenes. Car infinit̄ in iure reprobat̄: et nul briefe de iourneys accoūts ſur iourneys accoūts ſerr̄ poīt. Mes fuit reſolue p̄ touts q̄ cōe ceſt caſe eſt le darr̄ bil de reuiū fuit abſurd, car ceo prie que le primer bill ſerr̄ reuiue, & le priū bil pria q̄ Martha poet trauers, & Martha eſt moīt, & pur ceo le bil de reuiuer doit auer prie que ſon heire poet trauers. Et iſſint primerm̄t le diuoīce cy longe cōe ceo remaine in foīce lia le droit. Secondm̄t le nient trouer dun office diſable le pt̄ a trauerſer loffice. Et darreinment bil de reuiuer ſur reuiuer come ceſt caſe eſt nient maintenable.

FINIS.

¶ Caſuum iſtius libri ſeries.

5 · ps · fo · 9 · Brudnels cas / lease [illegible] [illegible] / Administrator ad indygent [illegible] [illegible] [illegible] [illegible] [illegible] de [illegible]

7 · ps · fo · 23 · Buts cas · rent [illegible] de fee simple terre: [illegible] / distres [illegible] bon, & le rent [illegible] [illegible] fee simple terre [illegible] [illegible] / bone reste

7 · pt · fo · 28 · Maunds cas · Executor de [illegible] a [illegible] est [illegible] [illegible] [illegible] [illegible] contract [illegible] [illegible] de [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] / [illegible] distres [illegible]

7 · pt · fo · 38 · Lillingstons cas · [illegible] del statut staple ad rent tal terme del statut [illegible] / le [illegible] [illegible] statute [illegible], [illegible] [illegible] [illegible] [illegible] le rent [illegible] [illegible] [illegible] est liable [illegible] [illegible] extinct [illegible] [illegible] [illegible] le [illegible] [illegible] est [illegible] [illegible] [illegible] [illegible] de [illegible] [illegible] [illegible] rent [illegible] [illegible] le [illegible] tenant [illegible]

Vide · 6 · pt · fo · 78 · Sr Regn Abergad: case

7 · fo · 40 · Bedles cas · [illegible] [illegible] [illegible] al [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

7 · fo · 41 · Beresfords cas · [illegible] [illegible] [illegible] [illegible] [illegible] est [illegible] [illegible] [illegible] [illegible] de [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

7 · fo · 43 · Kennis cas · divorces [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] divorces [illegible] allowable [illegible] le temps [illegible] [illegible] / [illegible] bastard [illegible] [illegible] [illegible] al temps [illegible] [illegible]

5502.2

1. 5502.2 Great Brit. Courts. Le quart part des reportes del Edward Coke ... 1604.
2. 5505 Gt. Brit. Courts. Quinta pars ... 1606.
3. 5509 Gt. Brit. Courts. La size part ... 1607.
4. 5511 Gt. Brit. Courts. La sept part ... 1608.